



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



HARVARD LAW SCHOOL  
LIBRARY

HARV

ARY











2208  
Massachusetts  
THE  
sept 12<sup>th</sup> 1873

# GENERAL STATUTES

OF THE

## COMMONWEALTH OF MASSACHUSETTS:

ENACTED DECEMBER 28, 1859, TO TAKE EFFECT JUNE 1, 1860.

WITH

THE CONSTITUTIONS OF THE STATE AND THE UNITED STATES,  
A GLOSSARY, LIST OF ACTS PREVIOUSLY REPEALED,  
AND INDEX.

SECOND EDITION, 1873,

WITH REFERENCES TO SUBSEQUENT LEGISLATION AND JUDICIAL DECISIONS.

EDITED BY

WILLIAM A. RICHARDSON

AND

GEORGE P. SANGER.

BOSTON:  
PUBLISHED BY THE COMMONWEALTH. 1873  
WRIGHT AND POTTER, STATE PRINTERS.  
1873.

KFM  
2430  
1859  
.A2x

Mass  
132  
860.2

JUL 20 1938

*1. 10. 1938*



# PREFACE.

---

**THE** stereotype plates of the General Statutes and of the Supplement thereto having been destroyed in the great fire which, on the 9th and 10th of November, 1872, consumed a large portion of the best business part of the city of Boston, the Legislature, at its extra session, passed on the 10th of December the following resolves, being Chapters 70 and 71 of the Resolves of that year: —

*Resolved*, That the secretary of the Commonwealth may contract with the state printers for the reproduction of the stereotype plates of the General Statutes and Supplements thereto, destroyed in the late conflagration in the city of Boston, at a cost not exceeding ten thousand four hundred and fifty dollars.

*Resolved*, That the commissioners on the publication of the General Statutes appointed by chapter one hundred and forty of the resolves of the year eighteen hundred and fifty-nine, be authorized and directed, at an expense not exceeding five hundred dollars, to cause to be incorporated in the new stereotype plates of the General Statutes and Supplements thereto, references to subsequent legislation and judicial decisions.

This volume is published under the authority of these resolves, and is designated "Second Edition, 1873," for convenient reference.

In reproducing the plates of the General Statutes, the commissioners have retained everything which was in the former edition; have inserted in their proper places all amendments to the Constitutions of the Commonwealth and the United States; have noted the chapters, sections, and parts of sections of the statutes expressly repealed or superseded; and have made numerous references in the margin to subsequent legislation and judicial decisions.

The letter R or S is placed at the head of each repealed or superseded section, the section is enclosed in brackets, and in the margin, or at the head of the chapter, a reference is made to the Act by which the section is thus affected.

WILLIAM A. RICHARDSON,  
GEORGE P. SANGER.

CAMBRIDGE, March, 1873.

# PREFACE

*TO THE FIRST EDITION.*

---

ON the 16th day of February, 1855, pursuant to the recommendation of commissioners appointed by the governor under a resolve of the preceding year to report a plan for consolidating and arranging the general statutes of the commonwealth, the legislature passed a resolve requiring the governor, with the advice and consent of the council, to appoint three commissioners "for consolidating and arranging the general statutes of the commonwealth on the basis, plan, and general form and method of the Revised Statutes," with authority to "omit redundant enactments and those which may have ceased to have any effect or influence on existing rights; to reject superfluous words, and condense into as concise and comprehensive a form, as is consistent with a full and clear expression of the will of the legislature, all circuitous, tautological, and ambiguous phraseology; to suggest any mistakes, omissions, inconsistencies, and imperfections which may appear in the laws to be consolidated and arranged, and the manner in which they may be corrected, supplied, and amended." By virtue of this resolve,

JOEL PARKER, of CAMBRIDGE,  
WILLIAM A. RICHARDSON, of LOWELL, and  
ANDREW A. RICHMOND, of ADAMS,

were appointed and commissioned March 9, 1855. The commissioners immediately entered upon the discharge of their duties; and,

having completed the same in the autumn of 1858, their report was submitted in print to the legislature at the commencement of the annual session in January, 1859, by Messrs. Parker and Richardson ; Mr. Richmond having been prevented by illness from participating in the work during the last year of its progress.

On the 23d day of February, 1859, resolves were passed providing for a special session of the legislature, to be commenced on the first Wednesday of the next September, for the purpose of completing the revision, and also providing for the appointment of a joint special committee, consisting of the president and eleven other members of the Senate and the speaker and twenty-eight other members of the House of Representatives, to examine and consider, during the recess of the legislature, the report of the commissioners, to incorporate therein all general laws passed by the legislature at the annual session of that year, and with power to propose such amendments and alterations in existing laws as the committee might deem expedient.

The committee appointed under these resolves organized early in April, immediately after the adjournment of the legislature, and was in session about eighty days, exclusive of intervals of adjournment, holidays, and Sundays.

The committee reported in print, at the special session in September, numerous amendments to the commissioners' report, incorporating the legislation of the previous session and proposing many changes in the existing laws.

The legislature commenced its special session on the first Wednesday of September, and at that session, on the 28th day of December, 1859, passed the following act, which is therein designated as the GENERAL STATUTES.

By chapter 140 of the resolves of 1859, the undersigned were appointed commissioners "to edit and superintend the printing and publication of the General Statutes of the commonwealth, together with the Constitution thereof, the Constitution of the United States, and such other additions as they deem expedient," and to prepare marginal notes to the sections of the Statutes, and an exact and copious Index to the whole.

The text of the Constitution of Massachusetts and of the Statutes has been carefully compared with the rolls by the editors personally. In the necessary haste in which the Statutes were engrossed upon parchment during the last part of the special session, some errors appear to have been made therein. These have been noted by brackets, thus [ ], enclosing in Roman letters, like the body of the text, any omitted word or words which should have been engrossed upon the roll, and in *Italics* any erroneous or superfluous word or words found there; but this does not apply to cases where brackets are used in forms.

The marginal references to the statutes and decisions are taken chiefly from the commissioners' report; the references to the acts of the legislature of 1859, and to the later volumes of Gray's Reports, and a few other references having been added. The editors have attempted to connect together, by cross references in the margin, many of the provisions of law relating to the same subject.

A list of general acts passed subsequently to the passage of the Revised Statutes and expressly repealed before the passage of the General Statutes, with references to the repealing acts or sections, has been added, as a useful appendage to chapter 182, in order that the fact and time of the repeal of many laws not enumerated in that chapter may be more easily ascertained.

In compliance with chapter 138 of the resolves of 1859, a Glossary has been added, which is made rather for popular than for professional use, according to the supposed object of the resolve.

Much care and labor have been devoted to the Index, and it is believed that it will be found more full than that to any former edition of the laws of this commonwealth.

The editors trust that the short time allowed for printing, the volume and for preparing the Glossary and Index will be deemed a sufficient excuse for any errors or imperfections which may be discovered in their editorial labors.

WILLIAM A. RICHARDSON,  
GEORGE P. SANGER.

*May, 1860.*



# ANALYSIS

OF THE  
OF THE

## SEVERAL TITLES AND CHAPTERS

CONTAINED IN

# THE GENERAL STATUTES.

## PART I.

### OF THE INTERNAL ADMINISTRATION OF THE GOVERNMENT.

#### TITLE I.

##### OF THE JURISDICTION OF THE COMMONWEALTH, LEGISLATURE, STATUTES, PUBLIC REPORTS AND DOCUMENTS, STATE LIBRARY AND OTHER PUBLIC PROPERTY.

	PAGE
CHAPTER 1. — Of the Jurisdiction of the Commonwealth and Places ceded to the United States, .	43
CHAPTER 2. — Of the Legislature, . . . . .	46
CHAPTER 3. — Of the Statutes, . . . . .	49
CHAPTER 4. — Of Public Reports and Documents, . . . . .	52
CHAPTER 5. — Of the State Library and other Public Property, . . . . .	53

#### TITLE II.

##### OF ELECTIONS.

CHAPTER 6. — Of the Qualifications of Electors, . . . . .	56
CHAPTER 7. — Of the Manner of conducting Elections and returning Votes, . . . . .	57
CHAPTER 8. — Of the Election of Governor and other State Officers, . . . . .	61
CHAPTER 9. — Of the Election of Representatives in Congress and Electors of President and Vice-President, . . . . .	67
CHAPTER 10. — Of the Election of District and County Officers, . . . . .	70

#### TITLE III.

##### OF THE ASSESSMENT AND COLLECTION OF TAXES.

CHAPTER 11. — Of the Assessment of Taxes, . . . . .	73
CHAPTER 12. — Of the Collection of Taxes, . . . . .	81

## TITLE IV.

THE MILITIA, . . . . .	PAGE 83
------------------------	------------

## TITLE V.

### STAIN STATE OFFICERS AND MATTERS OF FINANCE.

in State Officers, . . . . .	127
Auditor, Treasurer, Land Agent, and Matters of Finance, . . . . .	133
State Board of Agriculture, . . . . .	141

## TITLE VI.

TOWNSHIPS AND CERTAIN COUNTY OFFICERS, . . . . .	142
--	-----

## TITLE VII.

### OF TOWNS AND CITIES.

Powers of Towns, and the Election, Qualification, and Duties, of Town Officers, . . . . .	156
in Powers and Duties of Cities, . . . . .	166
Census, . . . . .	167
Registry and Returns of Births, Marriages, and Deaths, . . . . .	168
Workhouses and Almshouses, . . . . .	170
Parish and Ward, . . . . .	173
Police and Fire Departments, . . . . .	175
Highways and Fence Viewers, Pounds, and Field Drivers, . . . . .	182

## TITLE VIII.

### OF THE PUBLIC HEALTH AND BURIALS.

Preservation of the Public Health, . . . . .	187
Promotion of Anatomical Science, . . . . .	195
Cemeteries and Burials, . . . . .	195

## TITLE IX.

THE PUBLIC RECORDS, . . . . .	197
-------------------------------	-----

## TITLE X.

### RELIGIOUS SOCIETIES; AND OF RELIGIOUS, CHARITABLE, AND EDUCATIONAL FUNDS AND ASSOCIATIONS.

Charities and Religious Societies, . . . . .	199
Gifts and Conveyances for Pious and Charitable Uses, . . . . .	205
Associations for Religious, Charitable, and Educational Purposes, . . . . .	207
Public Libraries, . . . . .	207

## TITLE XI.

## OF PUBLIC INSTRUCTION AND REGULATIONS RESPECTING CHILDREN.

	PAGE
CHAPTER 34. — Of the Board of Education, . . . . .	209
CHAPTER 35. — Of Teachers' Institutes and Associations, . . . . .	211
CHAPTER 36. — Of the School Funds, . . . . .	212
CHAPTER 37. — Of State Scholarships, . . . . .	213
CHAPTER 38. — Of the Public Schools, . . . . .	215
CHAPTER 39. — Of School Districts, . . . . .	220
CHAPTER 40. — Of School Registers and Returns, . . . . .	226
CHAPTER 41. — Of the Attendance of Children in the Schools, . . . . .	228
CHAPTER 42. — Of the Employment of Children and Regulations respecting them, . . . . .	229

## TITLE XII.

## OF WAYS, BRIDGES, PUBLIC PLACES, FERRIES, SEWERS, AND DRAINS.

CHAPTER 43. — Of the Laying out and Discontinuance of Highways, Town Ways, and Private Ways, . . . . .	231
CHAPTER 44. — Of the Repairs of Ways and Bridges, . . . . .	244
CHAPTER 45. — Of Regulations and By-Laws respecting Ways and Bridges, . . . . .	249
CHAPTER 46. — Of the Boundaries of Highways and other Public Places, and Encroachments thereon, . . . . .	251
CHAPTER 47. — Of Ferries, . . . . .	252
CHAPTER 48. — Of Sewers and Drains, . . . . .	253

## TITLE XIII.

## OF THE REGULATION OF TRADE IN CERTAIN CASES.

CHAPTER 49. — Of the Inspection and Sale of Provisions and other Merchandise, . . . . .	256
CHAPTER 50. — Of Sales by Auctioneers and Hawkers and Pedlers, . . . . .	280
CHAPTER 51. — Of Weights and Measures, . . . . .	284
CHAPTER 52. — Of Shipping and Pilotage, . . . . .	286
CHAPTER 53. — Of Money, Bonds, Bills of Exchange, and Promissory Notes, . . . . .	292
CHAPTER 54. — Of Agents, Consignees, and Factors, . . . . .	294
CHAPTER 55. — Of Limited Partnerships, . . . . .	296
CHAPTER 56. — Of the unauthorized Use of Trade Marks and Names, . . . . .	297

## TITLE XIV.

## OF CORPORATIONS AND PROPRIETORS OF COMMON LANDS.

CHAPTER 57. — Of Banks and Banking, . . . . .	299
CHAPTER 58. — Of Insurance Companies, . . . . .	319
CHAPTER 59. — Of Loan and Fund Associations, . . . . .	334
CHAPTER 60. — Of Manufacturing and other Corporations organized under Special Charters, . . . . .	336
CHAPTER 61. — Of Corporations organized under General Statutes, . . . . .	341
CHAPTER 62. — Of Turnpike, Canal, and Bridge Corporations, . . . . .	343
CHAPTER 63. — Of Railroad Corporations, . . . . .	348
CHAPTER 64. — Of Telegraph Companies, . . . . .	372
CHAPTER 65. — Of Aqueduct Corporations, . . . . .	374
CHAPTER 66. — Of Agricultural and Horticultural Societies, . . . . .	376
CHAPTER 67. — Of Proprietors of Wharves, General Fields, and Real Estate lying in common, . . . . .	379
CHAPTER 68. — Of the Powers, Duties, and Liabilities of Corporations, . . . . .	384

## TITLE X.V.

## OF THE INTERNAL POLICE OF THE COMMONWEALTH.

	PAGE
CHAPTER 69.—Of the Settlement of Paupers, . . . . .	390
CHAPTER 70.—Of the Support of Paupers by Cities and Towns, . . . . .	392
CHAPTER 71.—Of Alien Passengers and State Paupers, . . . . .	395
CHAPTER 72.—Of the Maintenance of Bastard Children, . . . . .	404
CHAPTER 73.—Of the State Lunatic Hospitals, . . . . .	406
CHAPTER 74.—Of County Receptacles for Insane Persons, . . . . .	411
CHAPTER 75.—Of the State Industrial School for Girls, . . . . .	413
CHAPTER 76.—Of the State Reform School for Boys, . . . . .	417
CHAPTER 77.—Of the Law of the Road, . . . . .	423
CHAPTER 78.—Of Timber afloat or cast on Shore, . . . . .	424
CHAPTER 79.—Of Lost Goods and Stray Beasts, . . . . .	425
CHAPTER 80.—Of Unclaimed Property transported by Common Carriers, . . . . .	426
CHAPTER 81.—Of Wrecks and Shipwrecked Goods, . . . . .	427
CHAPTER 82.—Of the Preservation of certain Birds and Animals, . . . . .	429
CHAPTER 83.—Of Fisheries, Kelp and Seaweed, . . . . .	431
CHAPTER 84.—Of the Observance of the Lord's Day, . . . . .	434
CHAPTER 85.—Of Gaming, . . . . .	435
CHAPTER 86.—Of the Manufacture, Sale, &c., of Intoxicating Liquors, . . . . .	437
CHAPTER 87.—Of the Suppression of Common Nuisances, . . . . .	453
CHAPTER 88.—Of Licenses and Municipal Regulations of Police, . . . . .	454

## PART II.

OF THE ACQUISITION, THE ENJOYMENT, AND THE TRANSMISSION  
OF PROPERTY, REAL AND PERSONAL; THE DOMESTIC RELATIONS,  
AND OTHER MATTERS CONNECTED WITH PRIVATE RIGHTS.

## TITLE I.

## OF REAL PROPERTY AND THE ALIENATION THEREOF.

CHAPTER 89.—Of Alienation by Deed; the Legal Formalities, Construction, and Operation, of Deeds for the Conveyance of Lands, . . . . .	465
CHAPTER 90.—Of Estates in Dower, by the Curtesy, for Years, and at Will; and General Pro- visions concerning Real Estate, . . . . .	468

## TITLE II.

CHAPTER 91.—OF TITLE TO REAL PROPERTY BY DESCENT, . . . . .	473
---	-----

## TITLE III.

	PAGE
CHAPTER 92. — OF WILLS, . . . . .	475

## TITLE IV.

## OF THE SETTLEMENT OF ESTATES OF DECEASED PERSONS, TRUSTS, AND SPECIAL PROVISIONS RELATING TO ESTATES, TRUSTS, AND GUARDIANSHIPS.

CHAPTER 93. — Of Letters Testamentary and Proceedings on the Probate of Wills, . . . . .	481
CHAPTER 94. — Of Administration and the Distribution of Estates of Intestates, . . . . .	482
CHAPTER 95. — Of Public Administrators, . . . . .	485
CHAPTER 96. — Of Inventories, Allowances to Widows and Children, and Collection of the Effects of Deceased Persons, . . . . .	488
CHAPTER 97. — Of the Payment of Debts and Legacies, . . . . .	490
CHAPTER 98. — Of the Accounts and Settlements of Executors and Administrators, . . . . .	494
CHAPTER 99. — Of Insolvent Estates, . . . . .	496
CHAPTER 100. — Of Trusts, . . . . .	500
CHAPTER 101. — Special Provisions relating to Estates, Trusts, and Guardianships, . . . . .	503

## TITLE V.

## OF TITLE TO REAL PROPERTY BY SPECIAL PROVISIONS OF LAW.

CHAPTER 102. — Of Sales of Lands by Executors, Administrators, and Guardians, . . . . .	509
CHAPTER 103. — Of taking Land to satisfy Executions for Debt, . . . . .	516
CHAPTER 104. — Of Homesteads, . . . . .	524

## TITLE VI.

CHAPTER 105. — OF THE PREVENTION OF FRAUDS AND PERJURIES, . . . . .	527
---	-----

## TITLE VII.

## OF THE DOMESTIC RELATIONS.

CHAPTER 106. — Of Marriage, . . . . .	528
CHAPTER 107. — Of Divorce, . . . . .	531
CHAPTER 108. — Of certain Rights and Liabilities of Husband and Wife, . . . . .	537
CHAPTER 109. — Of Guardians and Wards, . . . . .	542
CHAPTER 110. — Of the Adoption of Children and Change of Names, . . . . .	547
CHAPTER 111. — Of Masters, Apprentices, and Servants, . . . . .	549

## PART III.

### OF COURTS AND JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES.

#### TITLE I.

##### OF COURTS AND JUDICIAL OFFICERS.

	PAGE
CHAPTER 112. — Of the Supreme Judicial Court, . . . . .	552
CHAPTER 113. — Of the Supreme Judicial Court — Equity Jurisdiction, . . . . .	558
CHAPTER 114. — Of the Superior Court, . . . . .	561
CHAPTER 115. — Of Matters common to the Supreme Judicial and Superior Courts, . . . . .	565
CHAPTER 116. — Of Police Courts, . . . . .	568
CHAPTER 117. — Of Probate Courts, . . . . .	574
CHAPTER 118. — Of Courts of Insolvency, . . . . .	579
CHAPTER 119. — Of Judges and Registers of Probate and Insolvency, . . . . .	601
CHAPTER 120. — Of Justices of the Peace, . . . . .	604
CHAPTER 121. — Of Clerks, Attorneys, and other Officers of Judicial Courts, . . . . .	611
CHAPTER 122. — Special Provisions respecting Courts and the Administration of Justice, . . . . .	617

#### TITLE II.

##### OF ACTIONS AND PROCEEDINGS THEREIN.

CHAPTER 123. — Of the Commencement of Actions and Service of Process, . . . . .	619
CHAPTER 124. — Of Arrest, Imprisonment, and Discharge, . . . . .	632
CHAPTER 125. — Of Bail, . . . . .	642
CHAPTER 126. — Of Proceedings against Absent Defendants, and upon Insufficient Service, . . . . .	645
CHAPTER 127. — Of Actions which survive, and the Death and Disabilities of Parties, . . . . .	647
CHAPTER 128. — Of Actions by and against Executors and Administrators, . . . . .	650
CHAPTER 129. — Of Pleadings and Practice, . . . . .	652
CHAPTER 130. — Of Set-off and Tender, . . . . .	669
CHAPTER 131. — Of Witnesses and Evidence, . . . . .	672
CHAPTER 132. — Of Juries, . . . . .	679
CHAPTER 133. — Of Judgment and Execution, . . . . .	684

#### TITLE III.

##### OF REMEDIES RELATING TO REAL PROPERTY.

CHAPTER 134. — Of the Writ of Entry and Petitions for the Settlement of Title, . . . . .	691
CHAPTER 135. — Of the Writ of Dower, . . . . .	697
CHAPTER 136. — Of the Partition of Lands, . . . . .	698
CHAPTER 137. — Of Forcible Entry and Detainer, . . . . .	707
CHAPTER 138. — Of Waste and Trespass on Real Estate, . . . . .	708
CHAPTER 139. — Of Actions for Private Nuisances, . . . . .	710
CHAPTER 140. — Of the Foreclosure and Redemption of Mortgages, . . . . .	711
CHAPTER 141. — Of Information for Intrusion and the Recovery of Lands by the Commonwealth, . . . . .	717



## TITLE IV.

## OF CERTAIN WRITS AND PROCEEDINGS IN SPECIAL CASES.

	PAGE
CHAPTER 142. — Of Trustee Process, . . . . .	720
CHAPTER 143. — Of Replevin of Property, . . . . .	730
CHAPTER 144. — Of Habeas Corpus, Personal Replevin, and Personal Liberty, . . . . .	733
CHAPTER 145. — Of Audita Querela, Certiorari, Mandamus, and Quo Warranto, . . . . .	742
CHAPTER 146. — Of Writs of Error and Review, . . . . .	745
CHAPTER 147. — Of Reference to Arbitration by Agreement before a Justice of the Peace, . . . . .	749
CHAPTER 148. — Of Improving Meadows and Swamps, . . . . .	750
CHAPTER 149. — Of the Support and Regulation of Mills, . . . . .	754
CHAPTER 150. — Of Liens on Buildings and Land, . . . . .	761
CHAPTER 151. — Of Mortgages, Pledges, and Liens upon Personal Property, . . . . .	766
CHAPTER 152. — Of Recognizances for Debts, . . . . .	770
CHAPTER 153. — Of Seizing and Libelling Forfeited Goods, . . . . .	772

## TITLE V.

## OF THE LIMITATION OF ACTIONS.

CHAPTER 154. — Of the Limitation of Real Actions and Rights of Entry, . . . . .	774
CHAPTER 155. — Of the Limitation of Personal Actions, . . . . .	777

## TITLE VI.

## OF COSTS AND THE FEES OF CERTAIN OFFICERS.

CHAPTER 156. — Of Costs in Civil Actions, . . . . .	780
CHAPTER 157. — Of the Fees of certain Officers, . . . . .	783

## PART IV.

OF CRIMES, PUNISHMENTS, PROCEEDINGS IN CRIMINAL CASES,  
AND PRISONS.

## TITLE I.

## OF CRIMES AND PUNISHMENTS.

CHAPTER 158. — Of the Rights of Persons accused, . . . . .	789
CHAPTER 159. — Of Offences against the Sovereignty of the Commonwealth, . . . . .	790
CHAPTER 160. — Of Offences against the Person, . . . . .	791
CHAPTER 161. — Of Offences against Property, . . . . .	795
CHAPTER 162. — Of Forgery and Offences against the Currency, . . . . .	807

	PAGE
CHAPTER 163. — Of Offences against Public Justice, . . . . .	811
CHAPTER 164. — Of Offences against the Public Peace, . . . . .	815
CHAPTER 165. — Of Offences against Chastity, Morality, and Decency, . . . . .	817
CHAPTER 166. — Of Offences against the Public Health, . . . . .	822
CHAPTER 167. — Of Offences against Public Policy, . . . . .	823
CHAPTER 168. — Of Felonies, Accessories, Abettors, and Attempts to commit Crimes, . . . . .	825

## TITLE II.

### OF PROCEEDINGS IN CRIMINAL CASES.

CHAPTER 169. — Of Proceedings to prevent the Commission of Crimes, . . . . .	827
CHAPTER 170. — Of Search Warrants, Rewards, Arrest, Examination, Commitment, and Bail, . . . . .	829
CHAPTER 171. — Of Indictments, Prosecutions, and Proceedings before Trial, . . . . .	836
CHAPTER 172. — Of Trials, . . . . .	840
CHAPTER 173. — Of Appeals, New Trials, and Reports, . . . . .	842
CHAPTER 174. — Of Judgment and Execution, . . . . .	844
CHAPTER 175. — Of Inquests on Dead Bodies, . . . . .	848
CHAPTER 176. — Of Fines, Forfeitures, and Costs, . . . . .	850
CHAPTER 177. — Of Fugitives from Justice and Pardons, . . . . .	853

## TITLE III.

### OF PRISONS AND IMPRISONMENT.

CHAPTER 178. — Of Jails and Houses of Correction, . . . . .	856
CHAPTER 179. — Of the State Prison, . . . . .	869
CHAPTER 180. — Of the Transfer of Lunatics and Discharge of Poor Convicts, . . . . .	877

## PART V.

### OF THE GENERAL STATUTES AND THE REPEAL OF EXISTING LAWS.

CHAPTER 181. — Of the General Statutes and their Effect, . . . . .	880
CHAPTER 182. — Of the Express Repeal of Existing Laws, . . . . .	881

**CONSTITUTIONS**

**OF THE**

**UNITED STATES OF AMERICA,**

**AND OF THE**

**COMMONWEALTH OF MASSACHUSETTS.**



# CONSTITUTION

OF THE

## UNITED STATES OF AMERICA.

### PREAMBLE

Objects of the Constitution.

### ARTICLE I.

#### SECTION

1. Legislative powers, in whom vested.
2. House of representatives, how and by whom chosen. — Qualifications of a representative. — Representatives and direct taxes, how apportioned. — Census. — Vacancies to be filled. — Power of choosing officers, and of impeachment.
3. Senators, how and by whom chosen. — How classified. — State executive to make temporary appointments, in case, &c. — Qualifications of a senator. — President of the senate, his right to vote. — President *pro tem.* and other officers of senate, how chosen. — Power to try impeachments. — When president is tried, chief justice to preside. — Sentence.
4. Times, &c. of holding elections, how prescribed. — One session in each year.
5. Membership. — Quorum. — Adjournments. — Rules. — Power to punish or expel. — Journal. — Time of adjournment limited, unless, &c.
6. Compensation. — Privileges. — Disqualification in certain cases.
7. House to originate all revenue bills. — Veto. — Bill may be passed by two thirds of each house, notwithstanding, &c. — Bill not returned in ten days. — Provision as to all orders, &c. except, &c.
8. Powers of congress.
9. Provision as to migration or importation of certain persons. — *Habeas corpus.* — Bills of attainder, &c. — Taxes, how apportioned. — No export duty. — No commercial preferences. — No money drawn from treasury, unless, &c. — No titular nobility. — Officers not to receive presents, unless, &c.
10. States prohibited from the exercise of certain powers.

### ARTICLE II.

#### SECTION

1. President and vice president, their term of office. — Electors of president and vice president, number, and how appointed. — Electors to vote on same day. — Qualification of president. — On whom his duties devolve in case of his removal, death, &c. — President's compensation. — His oath.

#### SECTION

2. President to be commander in chief. — He may require opinion of, &c. and may pardon. — Treaty making power. — Nomination of certain officers. — When president may fill vacancies.
3. President shall communicate to congress. — He may convene and adjourn congress, in case, &c.; shall receive ambassadors, execute laws, and commission officers.
4. All civil offices forfeited for certain crimes.

### ARTICLE III.

#### SECTION

1. Judicial power. — Tenure. — Compensation.
2. Judicial power, to what cases it extends. — Original jurisdiction of supreme court. — Appellate. — Trial by jury, except, &c. — Trial, where.
3. Treason defined. — Proof of. — Punishment of.

### ARTICLE IV.

#### SECTION

1. Credit to be given to public acts, &c. of every state.
2. Privileges of citizens of each state. — Fugitives from justice to be delivered up. — Persons held to service, having escaped, to be delivered up.
3. Admission of new states. — Power of congress over territory and other property.
4. Republican form of government guaranteed. — Each state to be protected.

### ARTICLE V.

Constitution, how amended. — Provide.

### ARTICLE VI.

Certain debts, &c. adopted. — Supremacy of constitution, treaties and laws of the United States. — Oath to support constitution, by whom taken. — No religious test.

### ARTICLE VII.

What ratification shall establish constitution.

### AMENDMENTS.

#### ARTICLE

1. Religious establishment prohibited. — Freedom of speech, of the press, and right to petition.
2. Right to keep and bear arms.
3. No soldier to be quartered in any house, unless, &c.

## ARTICLE OF AMENDMENT.

4. Right of search and seizure regulated.
5. Provisions concerning prosecutions, trials, and punishments. — Private property, not to be taken for public use, without, &c.
6. Further provisions respecting criminal prosecutions.
7. Rights of trial by jury secured.
8. Bail, fines, and punishments.
9. Rule of construction.

## ARTICLE OF AMENDMENT.

10. Same subject.
11. Same subject.
12. Manner of choosing president and vice president.
13. Slavery abolished.
14. Citizenship defined. — Apportionment of representatives. — Persons engaged in rebellion excluded from office. — Debts of U. S. and of states contracted during the rebellion.
15. Right of citizenship not to be abridged.

Preamble.  
2 Dall. 419.  
1 Wheat. 304.  
4 Wheat. 816.  
9 Wheat. 1.

WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.

## ARTICLE I.

Legislative powers, in whom vested.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

House of representatives, how and by whom chosen.

SECT. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Qualifications of a representative.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes, how apportioned.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Vacancies to be filled.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Power of choosing officers, and of impeachment. Senators, how and by whom chosen.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

How classified.

SECT. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

State executive to make temporary appointments, in case, &c.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.



No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Qualifications of a senator.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

President of the senate, his right to vote.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

President *pro temp.* and other officers of senate, how chosen.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

Power to try impeachments.

When president is tried, chief justice to preside.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Sentence.

SECT. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

Times, &c. of holding elections, how prescribed. U. S. Statutes, 1812, 47, § 2.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

One session in each year.

SECT. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Membership.

Quorum.

Adjournments.

Each house may determine the rules of its proceedings, and punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Rules. Power to punish or expel.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Time of adjournment limited, unless, &c.

SECT. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Compensation.

Privileges.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Disqualification in certain cases.

SECT. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

House to originate all revenue bills.

**Veto.** Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Bill may be passed by two thirds of each house, notwithstanding, &c.

Bill not returned in ten days.

Provision as to all orders, &c. except, &c.

Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Powers of congress.

5 Wheat. 317.  
12 Wheat. 419.

9 Wheat. 1.  
12 Pct. 72.  
2 Wheat. 259.

4 Wheat. 122.  
12 Wheat. 213.

4 Gray, 559.

5 Wheat. 153.

5 Wheat. 1.  
12 Wheat. 19.

1 Cranch, 137.  
9 Wheat. 733.  
12 Wheat. 186.

SECT. 8. The congress shall have power — to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States; — To borrow money on the credit of the United States; — To regulate commerce with foreign nations, and among the several states, and with the Indian tribes; — To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States; — To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures; — To provide for the punishment of counterfeiting the securities and current coin of the United States; — To establish post offices and post roads; — To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries; — To constitute tribunals inferior to the supreme court; — To define and punish piracies and felonies committed on the high seas, and offences against the law of nations; — To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; — To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; — To provide and maintain a navy; — To make rules for the government and regulation of the land and naval forces; — To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions; — To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress; — To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; — And to make all laws which shall be necessary and proper for carrying into execution the foregoing pow-

ers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECT. 9. The migration or importation of such persons, as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct, tax, shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECT. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Provision as to migration or importation of certain persons.

*Habeas corpus.*  
4 Cranch, 75.

Bills of attainder, &c.  
3 Dall. 386.  
12 Wheat. 218.  
Taxes, how apportioned.  
No export duty.  
No commercial preferences.

No money drawn from treasury, unless, &c.

No titular nobility.  
Officers, not to receive presents, unless, &c.

States prohibited from the exercise of certain powers.  
11 Pet. 257, 420.  
5 Gray, 297.

12 Wheat. 419.

## ARTICLE II.

SECT. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected, as follows:—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: But no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest

President and vice president, their term of office.

Electors of president and vice president, number, and how appointed.

Amendment XII. a substitute for this paragraph.

number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.]

Electors to vote  
on same day.  
U. S. Statutes,  
1845, 1.

Qualifications of  
president.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

On whom his  
duties devolve in  
case of his re-  
moval, death,  
&c.  
U. S. Statutes,  
1792, 8, §§ 9, 10.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

President's  
compensation.  
U. S. Statutes,  
1793, 9.  
1853, 97, § 4.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—

His oath.

“I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States.”

President to be  
commander in  
chief.  
He may require  
opinion of, &c.,  
and may pardon.

SECT. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

Treaty-making  
power.  
1 Cranch. 137.  
2 Pet. 253.  
12 Pet. 524.  
13 Pet. 415.  
Nomination of  
certain officers.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

1 Pet. 511.  
13 Pet. 230.

When president  
may fill vacan-  
cies.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

President shall  
communicate to  
congress.  
He may convene  
and adjourn con-  
gress, in case, &c.

SECT. 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment,

he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Shall receive ambassadors; execute laws, and commission officers.

SECT. 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

All civil offices forfeited for certain crimes.

### ARTICLE III.

SECT. 1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Judicial power.

Tenure.

Compensation.

SECT. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers, and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states,—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

Judicial power, to what cases it extends.

2 Dall. 419.  
1 Cranch, 187.  
11 Wheat. 467.  
1 Pet. 511.  
12 Pet. 667.  
5 Pet. 1.  
See amendment XI.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

Original jurisdiction of supreme court.

Appellate.  
7 Cranch, 108.  
1 Wheat. 304.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Trial by jury, except, &c.  
Trial, where.

SECT. 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Treason defined.

1 Dall. 56.  
2 Dall. 348.  
Proof of.  
4 Cranch, 470.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Punishment of.

### ARTICLE IV.

SECT. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Credit to public acts, &c. of every state.

U. S. Statutes, 1790, 11.  
1804, 66.

SECT. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

7 Cranch, 481.  
3 Wheat. 284.  
Privileges of citizens of each state.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

18 How. 71.  
3 Gray, 276.  
Fugitives from justice to be delivered up.

Persons held to service, having escaped, to be delivered up.  
U. S. Statutes, 1793, 7.  
1850, 60.  
16 Pet. 539.  
Admission of new states.

Power of congress over territory and other property.

Republican form of government guaranteed.  
Each state to be protected.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECT. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECT. 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

## ARTICLE V.

Constitution, how amended.

The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Proviso.

## ARTICLE VI.

Certain debts, &c. adopted.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

Supremacy of constitution, treaties and laws of the U. States.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

Oath to support constitution, by whom taken.  
See U. S. Stat., 1789, 1, §§ 1, 3.  
No religious test.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII.

What ratification shall establish constitution.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

# ARTICLES

IN ADDITION TO, AND AMENDMENT OF,

*The constitution of the United States of America, proposed by congress, and ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.*

ARTICLE I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Religious establishment prohibited.  
Freedom of speech; of the press, and right to petition.  
Right to keep and bear arms.

ART. II. A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

ART. III. No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

No soldier to be quartered in any house, unless, &c.

ART. IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Right of search and seizure regulated.  
3 Cranch, 448.

ART. V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Provisions concerning prosecutions, trials, and punishments.

2 Sumner, 19.

ART. VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Private property, not to be taken for public use, without, &c.  
7 Pet. 243.  
Further provisions respecting criminal prosecutions.

ART. VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Right of trial by jury secured.  
3 Pet. 433.  
5 Gray, 144.

ART. VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Bail, fines, and punishments.  
5 Gray, 462.  
Rule of construction.

ART. IX. The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ART. X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Same subject.  
3 Gray, 268.

ART. XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Same subject.  
3 Dall. 378.

ART. XII. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice

Manner of choosing president and vice president.

Manner of choosing president and vice president.

president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; — the president of the senate shall, in presence of the senate and house of representatives, open all the certificates and the votes shall then be counted; — the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

Same subject.

The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

Same subject.

But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

Slavery abolished.

ART. XIII. SECT. 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Appropriate legislation.

SECT. 2. Congress shall have power to enforce this article by appropriate legislation.

Who are citizens of United States; privileges of not to be abridged.

ART. XIV. SECT. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Apportionment of representatives.

SECT. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Certain persons who engaged in rebellion not to hold offices.

SECT. 3. No person shall be a senator, or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United



States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

Disability may be removed.

SECT. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned.

Debt of United States not to be questioned.

But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Debts incurred in aid of rebellion to be void, &c.

SECT. 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Appropriate legislation.

ART. XV. SECT. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

Right of citizenship not to be abridged.

SECT. 2. The congress shall have power to enforce this article by appropriate legislation.

[NOTE. The constitution was adopted 17th September, 1787, by the unanimous consent of the states present in the convention appointed in pursuance of the resolution of the congress of the confederation, of the 21st February, 1787, and was ratified by the conventions of the several states, as follows, viz.: By convention of Delaware, 7th December, 1787; Pennsylvania, 12th December, 1787; New Jersey, 18th December, 1787; Georgia, 2d January, 1788; Connecticut, 9th January, 1788; Massachusetts, 6th February, 1788; Maryland, 28th April, 1788; South Carolina, 23d May, 1788; New Hampshire, 21st June, 1788; Virginia, 29th June, 1788; New York, 26th July, 1788; North Carolina, 21st November, 1789; Rhode Island, 29th May, 1790.

The first ten of the amendments were proposed at the first session of the first congress of the United States, 25th September, 1789, and were finally ratified by the constitutional number of states on the 15th day of December, 1791. The eleventh amendment was proposed at the first session of the third congress, 5th March, 1794, and was declared in a message from the President of the United States to both houses of congress, dated 8th January, 1798, to have been adopted by the constitutional number of states. The twelfth amendment was proposed at the first session of the eighth congress, 12th December, 1803, and was adopted by the constitutional number of states in 1804, according to a public notice thereof by the secretary of state, dated 25th September of the same year. For notes on the adoption of the 13th, 14th, and 15th amendments see Supplement to the General Statutes, pages 634, 779, and 872.]



A

# CONSTITUTION

OR

## FORM OF GOVERNMENT

FOR THE

### Commonwealth of Massachusetts.

---

#### PREAMBLE.

Objects of government. — Body politic, how formed.  
— Its nature.

#### PART THE FIRST.

##### ARTICLE

1. Equality and natural rights of all men.
2. Right and duty of public religious worship. — Protection therein.
3. Legislature empowered to compel provision for public worship; and to enjoin attendance thereon. — Exclusive right of electing religious teachers secured. — Option, as to whom parochial taxes may be paid, unless, &c. — All denominations equally protected. — Subordination of one sect to another, prohibited.
4. Right of self-government secured.
5. Accountability of all officers, &c.
6. Services rendered to the public being the only title to peculiar privileges, hereditary offices are absurd and unnatural.
7. Objects of government; right of people to institute and change it.
8. Right of people to secure rotation in office.
9. All, having the qualifications prescribed, equally eligible to office.
10. Right of protection and duty of contribution, correlative. — Taxation, founded on consent. — Private property not to be taken for public uses, without, &c.
11. Remedies, by recourse to the law, to be free, complete and prompt.
12. Prosecutions regulated. — Right to trial by jury in criminal cases, except, &c.
13. Crimes to be proved in the vicinity.
14. Right of search and seizure, regulated.
15. Right to trial by jury sacred, except, &c.
16. Liberty of the press.
17. Right to keep and bear arms. — Standing armies dangerous. — Military power, subordinate to civil.
18. Moral qualifications for office. — Moral obligations of lawgivers and magistrates.

##### ARTICLE

19. Right of people to instruct representatives and petition legislature.
20. Power to suspend the laws, or their execution.
21. Freedom of debate, &c., and reason thereof.
22. Frequent sessions, and objects thereof.
23. Taxation founded on consent.
24. *Ex post facto* laws, prohibited.
25. Legislature not to convict of treason, &c.
26. Excessive bail or fines, and cruel punishments, prohibited.
27. No soldier to be quartered in any house, unless, &c.
28. Citizens exempt from law martial, unless, &c.
29. Judges of supreme judicial court. — Tenure of their office. — Salaries.
30. Separation of executive, judicial, and legislative departments.

#### PART THE SECOND.

##### FRAME OF GOVERNMENT.

Title of body politic.

##### CHAPTER I.

##### SECTION 1.

##### ARTICLE

1. Legislative department.
2. Governor's veto. — Bill may be passed by two thirds of each house, notwithstanding.
3. General court may constitute judicatories, courts of record, &c. — Courts, &c., may administer oaths.
4. General court may enact laws, &c., not repugnant to the constitution; may provide for the election or appointment of officers; prescribe their duties; impose taxes, duties and excises, to be disposed of for defence, protection, &c. — Valuation of estates, once in ten years, at least, while, &c.

## SECTION 2.

## ARTICLE

1. Senate, number of, and by whom elected. — Counties to be districts, until, &c.
2. Manner and time of choosing senators and councillors. — Word "inhabitant," defined. — Selectmen to preside at town meetings. — Return of votes. — Inhabitants of unincorporated plantations, who pay state taxes, may vote. — Plantation meetings. — Assessors to notify, &c.
3. Governor and council to examine and count votes and issue summonses.
4. Senate to be final judges of elections, &c., of its own members. — Vacancies, how filled.
5. Qualifications of a senator.
6. Senate not to adjourn more than two days.
7. shall choose its officers and establish its rules.
8. shall try all impeachments. — Oaths. — Limitation of sentences.
9. quorum.

## SECTION 3.

## ARTICLE

1. Representation of the people.
2. Representatives, by whom chosen. — Provision as to towns having less than 150 ratable polls. — Towns liable to fine, in case, &c. — Expense of travelling to and from the general court, how paid.
3. Qualifications of a representative.
4. Qualifications of a voter.
5. Representatives, when chosen.
6. House alone can impeach.
7. House to originate all money bills.
8. Not to adjourn more than two days.
9. Quorum.
10. House to judge of returns, &c., of its own members; to choose its officers and establish its rules, &c. — May punish for certain offences. — Privileges of members.
11. Governor and council may punish. — General limitations. — Trial may be by committee, or otherwise.

## CHAPTER II.

## SECTION 1.

## ARTICLE

1. Governor. — His title.
2. to be chosen annually. — Qualifications.
3. to be chosen by the people, by a majority of votes. — How chosen, when no person has a majority.
4. Power of governor, and of governor and council.
5. Same subject.
6. Governor and council may adjourn general court, in cases, &c., but not exceeding ninety days.
7. Governor to be commander-in-chief. — Limitation.
8. Governor and council may pardon offences, except, &c. — But not before conviction.
9. All judicial officers, &c., how nominated and appointed.
10. Militia officers, how elected. — How commissioned. — Major generals, how appointed and commissioned. — Vacancies, how filled, in case, &c. — Officers, duly commissioned, how removed. — Adjutants, &c., how appointed. — Organization of militia.
11. Money, how drawn from the treasury, except, &c.
12. All public boards, &c., to make quarterly returns.
13. Salary of governor. — Salaries of justices of

## ARTICLE

supreme judicial court. — Salaries to be enlarged, if insufficient.

## SECTION 2.

## ARTICLE

1. Lieutenant governor; his title and qualifications. — How chosen.
2. President of council. — Lieutenant governor a member of, except, &c.
3. Lieutenant governor to be acting governor, in case, &c.

## SECTION 3.

## ARTICLE

1. Council.
2. Number; from whom and how chosen. — If senators become councillors their seats to be vacated.
3. Rank of councillors.
4. No district to have more than two.
5. Register of council.
6. Council to exercise the power of governor, in case, &c.
7. Elections may be adjourned, until, &c. — Order thereof.

## SECTION 4.

## ARTICLE

1. Secretary, &c., by whom and how chosen. — Treasurer, ineligible for more than five successive years.
2. Secretary to keep records, to attend the governor and council, &c.

## CHAPTER III.

## ARTICLE

1. Tenure of all commissioned officers to be expressed. — Judicial officers, to hold office during good behavior, except, &c. — But may be removed on address.
2. Justices of supreme judicial court to give opinions, when required.
3. Justices of the peace; tenure of their office.
4. Provisions for holding probate courts.
5. Provisions for determining causes of marriage, divorce, &c.

## CHAPTER IV.

Delegates to congress.

## CHAPTER V.

## SECTION 1.

## ARTICLE

1. Harvard college. — Powers, privileges, &c., of the president and fellows, confirmed.
2. All gifts, grants, &c., confirmed.
3. Who shall be overseers. — Power of alteration reserved to the legislature.

## SECTION 2.

Duty of legislators and magistrates in all future periods.

## CHAPTER VI.

## ARTICLE

1. Oaths of allegiance and office, &c.
2. Plurality of offices, prohibited to governor, &c., except, &c. — Incompatible offices. — Bribery, &c., disqualify.
3. Value of money ascertained. — Property qualifications may be increased.
4. Provisions respecting commissions.
5. Provisions respecting writs.
6. Continuation of former laws, except, &c.
7. Benefit of habeas corpus secured except, &c.
8. The enacting style.
9. Officers of former government continued until, &c.

ARTICLE

10. Provision for revising constitution.
11. Provision for preserving and publishing this constitution.

AMENDMENTS.

ARTICLE

1. Bill, &c., not approved within five days, not to become a law, if legislature adjourn in the mean time.
2. General court empowered to charter cities. — Proviso.
3. Qualifications of voters for governor, lieutenant governor, senators and representatives.
4. Notaries public, how appointed and removed. — Vacancies in the office of secretary and treasurer, how filled, in case, &c. — Commissary general may be appointed, in case, &c. — Militia officers, how removed.
5. Who may vote for captains and subalterns.
6. Oath to be taken by all officers; or affirmation in case, &c.
7. Tests abolished.
8. Incompatibility of offices.
9. Amendments to constitution, how made.
10. Commencement of political year; and termination. — Meetings for choice of governor, lieutenant governor, &c., when to be held. — May be adjourned. — Article, when to go into operation. — Inconsistent provisions, annulled.
11. Religious freedom established.
12. Census of ratable polls. — Representatives, how apportioned.
13. Census of inhabitants. — Senatorial districts.

ARTICLE

- Apportionment of representatives and councillors. — Freehold as a qualification for a seat in general court or council not required.
14. Election by people to be by plurality.
15. Time of annual election of governor and legislature.
16. Eight councillors, how chosen. — State to be districted. — Day and manner of election. — Vacancies, how filled. — Organization of government.
17. Election of secretary, treasurer, auditor, and attorney general by the people. — Vacancies, how filled. — To qualify within ten days. — Qualifications.
18. School money not to be applied for sectarian schools.
19. Legislature to prescribe for election of sheriffs, registers of probate, &c., by the people.
20. Reading constitution in English and writing, necessary qualifications of voters. — Proviso.
21. Census of voters and inhabitants. — House of representatives to consist of 240 members. — Legislature to apportion, &c. — Qualifications of representatives, and number for quorum.
22. Census of voters and inhabitants. — Senate to consist of 40 members. — Senatorial districts. — Qualifications of senators, and number for quorum.
23. Residence of two years required of naturalized citizens to entitle to suffrage, or make eligible to office. *Repealed.*
24. Vacancies in the senate.
25. Vacancies in the council.
26. Twenty-third article repealed.

P R E A M B L E.

The end of the institution, maintenance and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it, with the power of enjoying in safety and tranquillity, their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of his providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish, the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

Objects of government.

Body politic, how formed. Its nature.

## PART THE FIRST.

*A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts.*

Equality and natural rights of all men.

ART. I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

Right and duty of public religious worship. Protection therein.  
2 Cus. 104.

II. It is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

Amendment, Art. XI. substituted for this.

Legislature empowered to compel provision for public worship;

[III. As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of God, and of public instructions in piety, religion and morality: Therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision at their own expense, for the institution of the public worship of God, and for the support and maintenance of public protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.]

and to enjoin attendance thereon.

And the people of this commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Exclusive right of electing religious teachers secured.

Provided notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

Option as to whom parochial taxes may be paid, unless, &c.

And all moneys, paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

All denominations equally protected. Subordination of one sect to another prohibited. Right of self-government secured.

And every denomination of christians, demeaning themselves peaceably, and as good subjects of the commonwealth, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another shall ever be established by law.]

IV. The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in Congress assembled.

Accountability of all officers, &c.

V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

Services rendered to the public being the only title to peculiar privileges, hereditary offices are absurd and unnatural.

VI. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by

blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

VII. Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

Objects of government; right of people to institute and change it.

VIII. In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

Right of people to secure rotation in office.

IX. All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

All, having the qualifications prescribed, equally eligible to office.

X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual, can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require, that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

Right of protection and duty of contribution correlative.  
Taxation founded on consent.  
1 Pick. 418.  
7 Pick. 844.  
12 Pick. 184, 467.  
16 Pick. 87.  
28 Pick. 380.  
4 Gray, 474.  
7 Gray, 363.  
14 Gray, 154.  
1 Allen, 150.  
Private property not to be taken for public uses without, &c.  
Remedies by recourse to the law, to be free, complete and prompt.

XI. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

Prosecutions regulated.  
8 Pick. 211.  
10 Pick. 9.  
21 Pick. 542.  
2 Met. 329.  
1 Gray, 1.  
5 Gray, 160.  
12 Allen, 170.

And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Right to trial by jury, in criminal cases, except, &c.  
8 Gray, 329, 373.  
Crimes to be proved in the vicinity.

XIII. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

XIV. Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation, and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation

Right of search and seizure regulated.  
Const. U. S., Amendments, Art. IV.  
2 Met. 329.  
5 Cush. 389.  
1 Gray, 1.  
13 Gray, 364.

of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.

Right to trial by jury sacred, except, &c. Const. of U. S., Amend't VII. 2 Pick. 382. 7 Pick. 386. 5 Gray, 144.

Liberty of the press.

Right to keep and bear arms. Standing armies dangerous. Military power subordinate to civil. 5 Gray, 121.

Moral qualifications for office.

Moral obligations of lawgivers and magistrates.

Right of people to instruct representatives and petition legislature.

Power to suspend the laws or their execution.

Freedom of debate, &c., and reason thereof.

Frequent sessions, and objects thereof.

Taxation founded on consent. 8 Allen, 247.

*Ex post facto* laws prohibited.

Legislature not to convict of treason, &c. Excessive bail or fines, and cruel punishments prohibited. 5 Gray, 432. No soldier to be quartered in any house, unless, &c.

Citizens exempt from law-martial, unless, &c.

XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.

XVI. The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth.

XVII. The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

XVIII. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.

XIX. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good: give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

XX. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

XXI. The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

XXII. The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening and confirming the laws, and for making new laws, as the common good may require.

XXIII. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature.

XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

XXVI. No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

XXVII. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

XXVIII. No person can in any case be subject to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.



XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

Judges of supreme judicial court.

Tenure of their office.

Salaries.

XXX. In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

Separation of executive, judicial, and legislative departments.  
2 Cush. 577.  
8 Allen, 247.

## PART THE SECOND.

### *The Frame of Government.*

The people, inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body politic, or state, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

Title of body politic.

## CHAPTER I.

### THE LEGISLATIVE POWER.

#### SECTION I. *The General Court.*

ART. I. The department of legislation shall be formed by two branches, a Senate and House of Representatives; each of which shall have a negative on the other.

Legislative department.

The legislative body shall assemble every year on the last Wednesday in May, and at such other times as they shall judge necessary; and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May; and shall be styled, THE GENERAL COURT OF MASSACHUSETTS.

See amendments, Art. X.

II. No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revival; and if he, upon such revision, approve thereof he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve. But if after such reconsideration, two-thirds of the said senate or house of representatives, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of a law: but in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the commonwealth.

Governor's veto.

Bill may be passed by two thirds of each house, notwithstanding.

See amendments,  
Art. I.  
8 Mass. 567.

General court  
may constitute  
judicatories,  
courts of record,  
&c.  
8 Gray, 1.  
12 Gray, 147, 154.

Courts, &c., may  
administer oaths.

General court  
may enact laws,  
&c.,

not repugnant  
to the constitu-  
tion;

may provide for  
the election or  
appointment of  
officers;

prescribe their  
duties;

impose taxes, &c.  
12 Mass. 262.  
6 Allen, 428.  
6 Allen, 658.  
8 Allen, 247.  
12 Allen, 77, 228,  
298, 500.  
98 Mass. 19.

to be disposed of  
for defence, pro-  
tection, &c.

Valuation of es-  
tates once in ten  
years, at least,  
while, &c.  
8 Allen, 247.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of a law.

III. The general court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, complaints, actions, matters, causes and things, whatsoever, arising or happening within the commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same: whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixed; and for the awarding and making out of execution thereupon. To which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy or depending before them.

IV. And further, full power and authority are hereby given and granted to the said general court, from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws, for the naming and settling all civil officers within the said commonwealth; the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers and limits, of the several civil and military officers of this commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said commonwealth; and also to impose, and levy, reasonable duties and excises, upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the governor of this commonwealth for the time being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of the said commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

And while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the commonwealth, taken anew once in every ten years at least, and as much oftener as the general court shall order.

## CHAPTER I.

### SECTION II. *Senate.*

Senate, number  
of, and by whom  
elected.  
See amendments,  
Art. XIII. and  
XVI.

[I. There shall be annually elected, by the freeholders and other inhabitants of this commonwealth, qualified as in this constitution is provided, forty persons to be councillors and senators for the year ensuing their election; to be chosen by the inhabitants of the districts, into which the commonwealth may from time to time be divided by the general court for that purpose: and the general court in assigning the numbers to be elected by the respective districts, shall govern themselves by the proportion of the public taxes paid

by the said districts; and timely make known to the inhabitants of the commonwealth, the limits of each district, and the number of councillors and senators to be chosen therein; provided, that the number of such districts shall never be less than thirteen; and that no district be so large as to entitle the same to choose more than six senators.

And the several counties in this commonwealth shall, until the general court shall determine it necessary to alter the said districts, be districts for the choice of councillors and senators, (except that the counties of Dukes county and Nantucket shall form one district for that purpose) and shall elect the following number for councillors and senators, viz.:—Suffolk, six; Essex, six; Middlesex, five; Hampshire, four; Plymouth, three; Barnstable, one; Bristol, three; York, two; Dukes county and Nantucket, one; Worcester, five; Cumberland, one; Lincoln, one; Berkshire, two.]

Counties to be districts, until, &c.  
See amendments, Art. XIII. and XXII.

II. The senate shall be the first branch of the legislature; [and the senators shall be chosen in the following manner, viz.: there shall be a meeting on the first Monday in April, annually, forever, of the inhabitants of each town in the several counties of this commonwealth; to be called by the selectmen, and warned in due course of law, at least seven days before the first Monday in April, for the purpose of electing persons to be senators and councillors; and at such meetings every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant.] And to remove all doubts concerning the meaning of the word "inhabitant" in this constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office, or place within this state, in that town, district or plantation, where he dwelleth, or hath his home.

Manner and time of choosing senators and councillors.  
See amendments, Art. II., X., XIV. and XV.  
See amendments, Art. III., XX., XXIII. and XXVI.

Word "inhabitant" defined.  
12 Gray, 21.

The selectmen of the several towns shall preside at such meetings impartially; and shall receive the votes of all the inhabitants of such towns present and qualified to vote for senators, and shall sort and count them in open town meeting, and in presence of the town clerk, who shall make a fair record, in presence of the selectmen, and in open town meeting, of the name of every person voted for, and of the number of votes against his name: and a fair copy of this record shall be attested by the selectmen and the town clerk, and shall be sealed up, directed to the secretary of the commonwealth for the time being, with a superscription, expressing the purport of the contents thereof, and delivered by the town clerk of such towns, to the sheriff of the county in which such town lies, thirty days at least before [the last Wednesday in May annually; or it shall be delivered into the secretary's office seventeen days at least before the said last Wednesday in May: and the sheriff of each county shall deliver all such certificates by him received, into the secretary's office, seventeen days before the said last Wednesday in May.]

Selectmen to preside at town meetings.

Return of votes.

See amendments, Art. II. and X.

And the inhabitants of plantations unincorporated, qualified as this constitution provides, who are or shall be empowered and required to assess taxes upon themselves toward the support of government, shall have the same privilege of voting for councillors and senators in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually [on the same first Monday in April], at such place in the plantations respectively, as the assessors thereof shall direct; which assessors shall have like authority for notifying the electors, collecting and returning the votes, as the selectmen and town clerks have in their several towns, by this constitution. And all other persons living in places unincorporated (qualified as aforesaid) who shall be assessed to the support of government by the assessors of an adjacent town, shall have the privilege of giving in their votes for councillors and senators, in the town where they shall be assessed, and be notified of the place of meeting by the selectmen of the town where they shall be assessed, for that purpose, accordingly.

Inhabitants of unincorporated plantations, who pay state taxes, may vote.

Plantation meetings.  
See amendments, Art. X.  
Assessors to notify, &c.

III. And that there may be a due convention of senators [on the last Wednesday in May] annually, the governor with five of the council, for the time being, shall, as soon as may be, examine the returned copies of such records; and fourteen days before the said day he shall issue his summons to such persons as shall appear to be chosen by a majority of voters, to attend on that day, and take their seats accordingly:

Governor and council to examine and count votes, and issue summonses.  
See amendments, Art. X.

[provided nevertheless, that for the first year the said returned copies shall be examined by the president and five of the council of the former constitution of government; and the said president shall, in like manner, issue his summons to the persons so elected, that they may take their seats as aforesaid.]

Senate to be final judge of elections, &c. of its own members. See amendments, Art. X., XIV. and XXIV.

Vacancies, how filled.

Qualifications of a senator. See amendments, Art. XIII. and XXII.

Senate not to adjourn more than two days. Shall choose its officers and establish its rules. Shall try all impeachments.

Oath.

Limitation of sentence.

Quorum. See amendments, Art. XXII.

IV. The senate shall be the final judge of the elections, returns and qualifications of their own members, as pointed out in the constitution; and shall, *[on the said last Wednesday in May]* annually, determine and declare who are elected by each district, to be senators [by a majority of votes; and in case there shall not appear to be the full number of senators returned elected by a majority of votes for any district, the deficiency shall be supplied in the following manner, viz.: The members of the house of representatives, and such senators as shall be declared elected, shall take the names of such persons as shall be found to have the highest number of votes in such district, and not elected, amounting to twice the number of senators wanting, if there be so many voted for; and out of these shall elect by ballot a number of senators sufficient to fill up the vacancies in such district; and in this manner all such vacancies shall be filled up in every district of the commonwealth; and in like manner all vacancies in the senate, arising by death, removal out of the state, or otherwise, shall be supplied as soon as may be, after such vacancies shall happen.]

V. Provided nevertheless, that no person shall be capable of being elected as a senator, [who is not seised in his own right of a freehold, within this commonwealth, of the value of three hundred pounds at least, or possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum, and] who has not been an inhabitant of this commonwealth for the space of five years immediately preceding his election, and at the time of his election, he shall be an inhabitant in the district for which he shall be chosen.

VI. The senate shall have power to adjourn themselves, provided such adjournments do not exceed two days at a time.

VII. The senate shall choose its own president, appoint its own officers, and determine its own rules of proceedings.

VIII. The senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives, against any officer or officers of the commonwealth, for misconduct and mal-administration in their offices. But previous to the trial of every impeachment the members of the senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however, shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this commonwealth: but the party so convicted, shall be, nevertheless, liable to indictment, trial, judgment, and punishment, according to the laws of the land.

IX. Not less than sixteen members of the Senate shall constitute a quorum for doing business.

## CHAPTER I.

### SECTION III. *House of Representatives.*

Representation of the people.

Representatives, by whom chosen. See amendments, Art. XII., XIII., and XXI.

Proviso as to towns having less than 150 ratable polls.

Towns liable to fine in case, &c.

I. There shall be, in the legislature of this commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

[II. And in order to provide for a representation of the citizens of this commonwealth, founded upon the principle of equality, every corporate town containing one hundred and fifty ratable polls, may elect one representative; every corporate town containing three hundred and seventy-five ratable polls, may elect two representatives; every corporate town containing six hundred ratable polls, may elect three representatives; and proceeding in that manner, making two hundred and twenty-five ratable polls, the mean increasing number for every additional representative.

Provided nevertheless, that each town now incorporated, not having one hundred and fifty ratable polls, may elect one representative; but no place shall hereafter be incorporated with the privilege of electing a representative, unless there are within the same one hundred and fifty ratable polls.]

And the house of representatives shall have power from time to time to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this constitution.

The expenses of travelling to the general assembly, and returning home, once in every session, and no more, shall be paid by the government, out of the public treasury, to every member who shall attend as seasonably as he can, in the judgment of the house, and does not depart without leave.

Expense of travelling to and from the general court, how paid.

III. Every member of the house of representatives shall be chosen by written votes; and for one year at least next preceding his election, shall have been an inhabitant of, and have been seised in his own right of a freehold of the value of one hundred pounds within the town he shall be chosen to represent, or any ratable estate to the value of two hundred pounds; and he shall cease to represent the said town, immediately on his ceasing to be qualified as aforesaid.

Qualifications of a representative. See amendments, Art. XIII., XIV., and XXI.

IV. Every male person, being twenty-one years of age, and resident in any particular town in this commonwealth for the space of one year next preceding, having a freehold estate within the same town, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a representative, or representatives for the said town.]

Qualifications of a voter. See amendments, Art. III., XX., and XXIII.

V. The members of the house of representatives shall be chosen annually in the month of May, ten days at least before the last Wednesday of that month.]

Representatives, when chosen. See amendments, Art. X. and XV.

VI. The house of representatives shall be the grand inquest of this commonwealth; and all impeachments made by them, shall be heard and tried by the senate.

House alone can impeach.

VII. All money bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

House to originate all money bills.

VIII. The house of representatives shall have power to adjourn themselves; provided such adjournment shall not exceed two days at a time.

Not to adjourn more than two days.

IX. Not less than sixty members of the house of representatives, shall constitute a quorum for doing business.]

Quorum. See amendments, Art. XXI. House to judge of returns, &c., of its own members: to choose its officers and establish its rules, &c. May punish for certain offences.

X. The house of representatives shall be the judge of the returns, elections, and qualifications of its own members, as pointed out in the constitution; shall choose their own speaker; appoint their own officers, and settle the rules and orders of proceeding in their own house. They shall have authority to punish by imprisonment, every person, not a member, who shall be guilty of disrespect to the house, by any disorderly, or contemptuous behavior, in its presence; or, who, in the town where the general court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members, for any thing said or done in the house; or who shall assault any of them therefor; or who shall assault, or arrest, any witness, or other person, ordered to attend the house, in his way in going or returning; or who shall rescue any person arrested by the order of the house.

And no member of the house of representatives shall be arrested, or held to bail on mean process, during his going unto, returning from, or his attending the general assembly.

Privileges of members.

XI. The senate shall have the same powers in the like cases; and the governor and council shall have the same authority to punish in like cases: provided that no imprisonment on the warrant or order of the governor, council, senate, or house of representatives, for either of the above described offences, be for a term exceeding thirty days.

Governor and council may punish. General limitation.

And the senate and house of representatives may try, and determine, all cases where their rights and privileges are concerned, and which, by the constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best.

Trial may be by committee, or otherwise.

## CHAPTER II.

## EXECUTIVE POWER.

SECTION I. *Governor.*

Governor.

I. There shall be a supreme executive magistrate, who shall be styled — **THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS**; and whose title shall be — **HIS EXCELLENCY**.

His title.

To be chosen annually.  
Qualifications.

II. The governor shall be chosen annually; and no person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this commonwealth for seven years next preceding; and unless he shall at the same time, be seised in his own right, of a freehold, within the commonwealth of the value of one thousand pounds; and unless he shall declare himself to be of the christian religion.

See amendments,  
Art. VII.

By whom chosen,  
if he have a majority of votes.

See amendments,  
Art. II., X.,  
XIV., and XV.

III. Those persons who shall be qualified to vote for senators and representatives within the several towns of this commonwealth, shall, at a meeting to be called for that purpose, on the first Monday of April annually, give in their votes for a governor, to the selectmen, who shall preside at such meetings; and the town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the last Wednesday in May; and the sheriff shall transmit the same to the secretary's office, seventeen days at least before the said last Wednesday in May; or the selectmen may cause returns of the same to be made to the office of the secretary of the commonwealth, seventeen days at least before the said day; and the secretary shall lay the same before the senate and the house of representatives, on the last Wednesday in May, to be by them examined; and in case of an election by a majority of all the votes returned, the choice shall be by them declared and published; but if no person shall have a majority of votes, the house of representatives shall, by ballot, elect two out of four persons who had the highest number of votes, if so many shall have been voted for, but, if otherwise, out of the number voted for; and make return to the senate of the two persons so elected; on which the senate shall proceed, by ballot, to elect one, who shall be declared governor.]

How chosen,  
when no person  
has a majority.

Power of governor,  
and of  
governor and  
council.

IV. The governor shall have authority from time to time, at his discretion, to assemble and call together the councillors of this commonwealth for the time being; and the governor with the said councillors, or five of them at least, shall, and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the commonwealth, agreeably to the constitution and the laws of the land.

Same subject.

See amendments,  
Art. X.

V. The governor, with advice of council, shall have full power and authority, during the session of the general court to adjourn or prorogue the same to any time the two houses shall desire; [*and to dissolve the same on the day next preceding the last Wednesday in May; and, in the recess of the said court, to prorogue the same from time to time, not exceeding ninety days in any one recess;*] and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the commonwealth shall require the same; and in case of any infectious distemper prevailing in the place where the said court is next at any time to convene, or any other cause happening whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other, the most convenient place within the state.

See amendments,  
Art. X.

Governor and  
council may adjourn the general  
court in cases,  
&c., but not exceeding ninety  
days.

Governor to be  
commander-in-  
chief.

[And the governor shall dissolve the said general court on the day next preceding the last Wednesday in May.]

VI. In cases of disagreement between the two houses, with regard to the necessity, expediency or time of adjournment or prorogation, the governor, with advice of the council, shall have a right to adjourn or prorogue the general court, not exceeding ninety days, as he shall determine the public good shall require.

VII. The governor of this commonwealth, for the time being, shall be the commander-in-chief of the army and navy, and of all the military

forces of the state, by sea and land; and shall have full power, by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and, for the special defence and safety of the commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them, to encounter, repel, resist, expel and pursue, by force of arms, as well by sea as by land, within or without the limits of this commonwealth, and also to kill, slay and destroy, if necessary, and conquer, by all fitting ways, enterprises, and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law martial, in time of war or invasion, and also in time of rebellion, declared by the legislature to exist, as occasion shall necessarily require; and to take and surprise by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall, in a hostile manner, invade, or attempt the invading, conquering, or annoying this commonwealth; and that the governor be intrusted with all these and other powers, incident to the offices of captain-general and commander-in-chief, and admiral, to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land, and not otherwise.

Governor to be commander-in-chief.

Provided, that the said governor shall not, at any time hereafter, by virtue of any power by this constitution granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the general court; except so far as may be necessary to march or transport them by land or water, for the defence of such part of the state to which they cannot otherwise conveniently have access.

Limitation.

VIII. The power of pardoning offences, except such as persons may be convicted of before the senate by an impeachment of the house, shall be in the governor, by and with the advice of council; but no charter of pardon, granted by the governor, with advice of the council before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

Governor and council may pardon offences, except, &c.

But not before conviction.

IX. All judicial officers, [*the attorney-general, the solicitor-general, all sheriffs,*] coroners, [*and registers of probate,*] shall be nominated and appointed by the governor, by and with the advice and consent of the council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

All judicial officers, &c., how nominated and appointed. See amendments, Art. XIV., XVII., and XIX. Militia officers, how elected. See amendments, Art. V.

X. The captains and subalterns of the militia, shall be elected by the written votes of the train-band and alarm list of their respective companies, [*of twenty-one years of age and upwards;*] the field officers of regiments shall be elected by the written votes of the captains and subalterns of their respective regiments: the brigadiers shall be elected, in like manner, by the field officers of their respective brigades; and such officers, so elected, shall be commissioned by the governor, who shall determine their rank.

How commissioned.

The legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the governor, the officers elected.

The major-generals shall be appointed by the senate and house of representatives, each having a negative upon the other; and be commissioned by the governor.

Major-generals, how appointed and commissioned.

And if the electors of brigadiers, field officers, captains or subalterns, shall neglect or refuse to make such elections, after being duly notified,

Vacancies, how filled, in case, &c.

according to the laws for the time being, then the governor, with advice of council, shall appoint suitable persons to fill such offices.

Officers duly  
commissioned,  
how removed.  
See amendments,  
Art. IV.  
Adjutants, &c.,  
how appointed.

[And no officer, duly commissioned to command in the militia, shall be removed from his office, but by the address of both houses to the governor, or by fair trial in court martial, pursuant to the laws of the commonwealth for the time being.]

The commanding officers of regiments shall appoint their adjutants and quartermasters; the brigadiers their brigade-majors; and the major-generals their aids; and the governor shall appoint the adjutant-general.

The governor, with advice of council, shall appoint all officers of the continental army, whom by the confederation of the United States it is provided that this commonwealth shall appoint, as also all officers of forts and garrisons.

Organization of  
militia.

The divisions of the militia into brigades, regiments and companies, made in pursuance of the militia laws now in force, shall be considered as the proper divisions of the militia of this commonwealth, until the same shall be altered in pursuance of some future law.

Money, how  
drawn from the  
treasury, except,  
&c.  
13 Allen, 598.

XI. No moneys shall be issued out of the treasury of this commonwealth, and disposed of (except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the governor for the time being, with the advice and consent of the council, for the necessary defence and support of the commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.

All public  
boards, &c., to  
make quarterly  
returns.

XII. All public boards, the commissary-general, all superintending officers of public magazines and stores, belonging to this commonwealth, and all commanding officers of forts and garrisons within the same, shall once in every three months, officially, and without requisition, and at other times, when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons; and the said commanding officer shall exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea or harbor or harbors, adjacent.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, despatches, and intelligences of a public nature, which shall be directed to them respectively.

Salary of gov-  
ernor.

XIII. As the public good requires that the governor should not be under the undue influence of any of the members of the general court by a dependence on them for his support; that he should in all cases, act with freedom for the benefit of the public, that he should not have his attention necessarily diverted from that object to his private concerns — and that he should maintain the dignity of the commonwealth in the character of its chief magistrate, it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: and it shall be among the first acts of the general court, after the commencement of this constitution, to establish such salary by law accordingly.

Salaries of jus-  
tices of supreme  
judicial court;

Permanent and honorable salaries shall also be established by law for the justices of the supreme judicial court.

to be enlarged  
if insufficient.

And if it shall be found that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time be enlarged, as the general court shall judge proper.



## CHAPTER II.

### SECTION II. *Lieutenant-Governor.*

I. There shall be annually elected a lieutenant-governor of the commonwealth of Massachusetts, whose title shall be — His Honor; and who shall be qualified, in point of religion, property, and residence in the commonwealth, in the same manner with the governor: and the day and manner of his election, and the qualifications of the electors, shall be the same as are required in the election of a governor. The return of the votes for this officer, and the declaration of his election, shall be in the same manner: [and if no one person shall be found to have a majority of all the votes returned, the vacancy shall be filled by the senate and house of representatives, in the same manner as the governor is to be elected, in case no one person shall have a majority of the votes of the people to be governor.]

Lieutenant-governor; his title and qualifications. See amendments, Art. III., VI., X., XV., XX. and XXIII.

How chosen.

II. The governor, and in his absence the lieutenant-governor, shall be president of the council, but shall have no vote in council; and the lieutenant-governor shall always be a member of the council except when the chair of the governor shall be vacant.

President of council. Lieutenant-governor a member of, except, &c.

III. Whenever the chair of the governor shall be vacant, by reason of his death, or absence from the commonwealth, or otherwise, the lieutenant-governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the governor, and shall have and exercise all the powers and authorities, which by this constitution the governor is vested with, when personally present.

Lieutenant-governor to be acting governor, in case, &c.

## CHAPTER II.

### SECTION III. *Council, and the Manner of settling Elections by the Legislature.*

I. There shall be a council for advising the governor in the executive part of the government, to consist of [nine] persons besides the lieutenant-governor, whom the governor, for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together. And the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the commonwealth, according to the laws of the land.

Council. See amendments, Art. XVI.

II. Nine councillors shall be annually chosen from among the persons returned for councillors and senators, on the last Wednesday in May, by the joint ballot of the senators and representatives assembled in one room: and in case there shall not be found upon the first choice, the whole number of nine persons who will accept a seat in the council, the deficiency shall be made up by the electors aforesaid from among the people at large; and the number of senators left shall constitute the senate for the year. The seats of the persons thus elected from the senate, and accepting the trust, shall be vacated in the senate.]

Number; from whom, and how chosen. See amendments, Art. X., XIII. and XVI. If senators become councillors, their seats to be vacated. Rank of councillors.

III. The councillors, in the civil arrangements of the commonwealth, shall have rank next after the lieutenant-governor.

IV. Not more than two councillors shall be chosen out of any one district of this commonwealth.]

No district to have more than two. Register of council.

V. The resolutions and advice of the council shall be recorded in a register, and signed by the members present; and this record may be called for at any time by either house of the legislature; and any member of the council may insert his opinion, contrary to the resolution of the majority.

VI. Whenever the office of the governor and lieutenant-governor shall be vacant, by reason of death, absence, or otherwise, then the council, or the major part of them, shall, during such vacancy, have full power and authority to do, and execute, all and every such acts, matters and things, as the governor or the lieutenant-governor might or could, by virtue of this constitution, do or execute, if they, or either of them, were personally present.

Council to exercise the power of governor, in case, &c.

Elections may be adjourned until, &c.

Order thereof. See amendments, Art. XVI. and XXV.

[VII. And whereas the elections appointed to be made, by this constitution, on the last Wednesday in May annually, by the two houses of the legislature, may not be completed on that day, the said elections may be adjourned from day to day until the same shall be completed. And the order of elections shall be as follows: the vacancies in the senate, if any, shall first be filled up; the governor and lieutenant-governor shall then be elected, provided there should be no choice of them by the people: and afterwards the two houses shall proceed to the election of the council.]

## CHAPTER II.

### SECTION IV. *Secretary, Treasurer, Commissary &c.*

Secretary, &c., by whom and how chosen. See amendments, Art. IV. and XVII.

Treasurer ineligible for more than five successive years.

Secretary to keep records; to attend the governor and council, &c.

I. [*The secretary, treasurer and receiver-general, and the commissary-general, notaries public, and naval officers, shall be chosen annually, by joint ballot of the senators and representatives in one room.*] And, that the citizens of this commonwealth may be assured, from time to time, that the moneys remaining in the public treasury, upon the settlement and liquidation of the public accounts, are their property, no man shall be eligible as treasurer and receiver-general more than five years successively.

II. The records of the commonwealth shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable, and he shall attend the governor and council, the senate and house of representatives, in person, or by his deputies, as they shall respectively require.

## CHAPTER III.

### JUDICIARY POWER.

Tenure of all commissioned officers to be expressed.

Judicial officers to hold office during good behavior, except, &c.

But may be removed on address.

Justices of supreme judicial court to give opinions when required.

Justices of the peace; tenure of their office.

Provisions for holding probate courts.

Provisions for determining causes of marriage, divorce, &c.

I. The tenure, that all commission officers shall by law have in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: provided nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature.

II. Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions.

III. In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void, in the term of seven years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the commonwealth.

IV. The judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require. And the legislature shall from time to time, hereafter appoint such times and places; until which appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

V. All causes of marriage, divorce, and alimony, and all appeals from the judges of probate shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision.

## CHAPTER IV.

### DELEGATES TO CONGRESS.

Delegates to congress.

[The delegates of this commonwealth to the congress of the United States, shall, some time in the month of June annually be elected by the joint ballot of the senate and

house of representatives, assembled together in one room ; to serve in congress for one year, to commence on the first Monday in November then next ensuing. They shall have commissions under the hand of the governor, and the great seal of the commonwealth ; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner, in their stead.] Delegates to Congress.

## CHAPTER V.

### THE UNIVERSITY AT CAMBRIDGE, AND ENCOURAGEMENT OF LITERATURE &c.

#### SECTION I. *The University.*

I. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences, which qualified them for public employments, both in church and state : and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the christian religion, and the great benefit of this and the other United States of America, — it is declared, that the PRESIDENT AND FELLOWS OF HARVARD COLLEGE, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy : and the same are hereby ratified and confirmed unto them, the said president and fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

Harvard College.

Powers, privileges, &c., of the president and fellows, confirmed.

II. And whereas there have been at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New England, or to the president and fellows of Harvard College, or to the said college, by some other description, under several charters, successively : it is declared, that all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the president and fellows of Harvard College, and to their successors in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, deviser or devisors.

All gifts, grants, &c. confirmed.

III. And whereas, by an act of the general court of the colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the governor and deputy-governor, for the time being, and all the magistrates of that jurisdiction, were, with the president, and a number of the clergy in the said act described, constituted the overseers of Harvard College : and it being necessary, in this new constitution of government to ascertain who shall be deemed successors to the said governor, deputy-governor and magistrates : it is declared, that the governor, lieutenant-governor, council and senate of this commonwealth, are, and shall be deemed, their successors, who, with the president of Harvard College, for the time being, together with the ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the overseers of Harvard College ; provided, that nothing herein shall be construed to prevent the legislature of this commonwealth from making such alterations in the government of the said university, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the legislature of the late Province of the Massachusetts Bay.

Who shall be overseers.  
See Statutes,  
1851, 224.  
1852, 27.  
1859, 212.  
1865, 173.

Power of alteration reserved to the legislature.

## CHAPTER V.

SECTION II. *The Encouragement of Literature, &c.*

Duty of legislatures and magistrates in all future periods. See amendments, Art. XVIII.

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.

## CHAPTER VI.

OATHS AND SUBSCRIPTIONS; INCOMPATIBILITY OF AND EXCLUSION FROM OFFICES; PECUNIARY QUALIFICATIONS; COMMISSIONS; WRITS; CONFIRMATION OF LAWS; HABEAS CORPUS; THE ENACTING STYLE; CONTINUANCE OF OFFICERS; PROVISION FOR A FUTURE REVISAL OF THE CONSTITUTION, &c.

Oaths, &c.

Abolished, see amendments, Art. VII.

[I. Any person chosen governor, lieutenant-governor, councillor, senator or representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration, viz.:

I, A. B., do declare, that I believe the Christian religion, and have a firm persuasion of its truth; and that I am seised and possessed, in my own right, of the property required by the constitution as one qualification for the office or place to which I am elected.

And the governor, lieutenant-governor, and councillors, shall make and subscribe the said declaration, in the presence of the two houses of assembly; and the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution, and forever afterwards before the governor and council for the time being.]

And every person chosen to either of the places or offices aforesaid, as also any person appointed or commissioned to any judicial, executive, military, or other office under the government, shall, before he enters on the discharge of the business of his place or office, take and subscribe the following declaration, and oaths or affirmations, viz.:

Oath of allegiance, see substitute, amendment, Art. VI.

["I, A. B., do truly and sincerely acknowledge, profess, testify and declare, that the Commonwealth of Massachusetts is, and of right ought to be, a free, sovereign, and independent state; and I do swear, that I will bear true faith and allegiance to the said commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatsoever; and that I do renounce and abjure all allegiance, subjection and obedience to the king, queen, or government of Great Britain, (as the case may be) and every other foreign power whatsoever; and that no foreign prince, person, prelate, state or potentate, hath, or ought to have, any jurisdiction, superiority, pre-eminence, authority, dispensing or other power, in any matter, civil, ecclesiastical or spiritual, within this commonwealth, except the authority and power which is or may be vested by their constituents in the congress of the United States: and I do further testify and declare, that no man or body of men hath or can have any right to absolve or discharge me from the obligation of this oath, declaration, or affirmation; and that I do make this acknowledgment, profession, testimony, declaration, denial, renunciation and abjuration, heartily and truly, according to the common meaning and acceptance of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever. So help me, God."]

Oath of office.

"I, A. B., do solemnly swear and affirm, that I will faithfully and

impartially discharge and perform all the duties incumbent on me as , according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution and the laws of the commonwealth. So help me, God."

[Provided always, that when any person chosen or appointed as aforesaid, shall be of the denomination of the people called Quakers, and shall decline taking the said oaths, he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words, "*I do swear*," "*and abjure*," "*oath or*," "*and abjuration*," in the first oath; and in the second oath, the words "*swear and*," and in each of them the words "*So help me, God*"; substituting instead thereof, "*This I do under the pains and penalties of perjury*."] Proviso.

And the said oaths or affirmations shall be taken and subscribed by the governor, lieutenant-governor, and councillors, before the president of the senate, in the presence of the two houses of assembly; and by the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution; and forever afterwards before the governor and council for the time being; and by the residue of the officers aforesaid, before such persons and in such manner as from time to time shall be prescribed by the legislature.

II. No governor, lieutenant-governor, or judge of the supreme judicial court, shall hold any other office or place, under the authority of this commonwealth, except such as by this constitution they are admitted to hold, saving that the judges of the said court may hold the offices of justices of the peace through the state; nor shall they hold any other place or office, or receive any pension or salary from any other state or government or power whatever.

Plurality of offices prohibited to governor, &c. except, &c. See amendments, Art. VIII.

No person shall be capable of holding or exercising at the same time, within this state, more than one of the following offices, viz.: judge of probate—sheriff—register of probate—or register of deeds; and never more than any two offices which are to be held by appointment of the governor, or the governor and council, or the senate, or the house of representatives, or by the election of the people of the state at large, or of the people of any county, military offices, and the offices of justices of the peace excepted, shall be held by one person.

Same subject. 1 Allen, 568.

No person holding the office of judge of the supreme judicial court—secretary—attorney-general—[*solicitor-general*]*—*treasurer or receiver-general—judge of probate—commissary-general—president, professor, or instructor of Harvard College—sheriff—clerk of the house of representatives—register of probate—register of deeds—clerk of the supreme judicial court—[*clerk of the inferior court of common pleas*]*—*or officer of the customs, including in this description naval officers—shall at the same time have a seat in the senate or house of representatives; but their being chosen or appointed to, and accepting the same, shall operate as a resignation of their seat in the senate or house of representatives; and the place so vacated shall be filled up.

Incompatible offices. See amendments, Art. VIII.

And the same rule shall take place in case any judge of the said supreme judicial court, or judge of probate, shall accept a seat in council; or any councillor shall accept of either of those offices or places.

Same subject.

And no person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance under the government of this commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption in obtaining an election or appointment.

Bribery, &c., disqualify.

III. In all cases where sums of money are mentioned in this constitution, the value thereof shall be computed in silver, at six shillings and eight pence per ounce; and it shall be in the power of the legislature from time to time to increase such qualifications, as to property, of the persons to be elected to offices, as the circumstances of the commonwealth shall require.

Value of money ascertained. Property qualifications may be increased. See amendments, Art. XIII.

IV. All commissions shall be in the name of the Commonwealth of

Provisions respecting commissions.

Massachusetts, signed by the governor and attested by the secretary or his deputy, and have the great seal of the commonwealth affixed thereto.

Provisions respecting writs,  
2 Pick. 582.  
8 Met. 68.  
18 Gray, 74.

V. All writs issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts; they shall be under the seal of the court from whence they issue; they shall bear test of the first justice of the court to which they shall be returnable, who is not a party, and be signed by the clerk of such court.

Continuation of former laws, except, &c.  
1 Mass. 59.  
2 Mass. 584.  
8 Pick. 309, 316.  
16 Pick. 107, 115.  
2 Met. 118.

VI. All the laws which have heretofore been adopted, used and approved in the Province, Colony or State of Massachusetts Bay, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature; such parts only excepted as are repugnant to the rights and liberties contained in this constitution.

Benefit of *habeas corpus* secured, except, &c.

VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this commonwealth, in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months.

The enacting style.

VIII. The enacting style, in making and passing all acts, statutes and laws, shall be — "Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same."

Officers of former government continued until, &c.

[IX. To the end there may be no failure of justice, or danger arise to the commonwealth from a change of the form of government, all officers, civil and military, holding commissions under the government and people of Massachusetts Bay in New England, and all other officers of the said government and people, at the time this constitution shall take effect, shall have, hold, use, exercise and enjoy, all the powers and authority to them granted or committed, until other persons shall be appointed in their stead: and all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies and powers shall continue in full force, in the enjoyment and exercise of all their trusts, employments and authority; until the general court, and the supreme and executive officers under this constitution, are designated and invested with their respective trusts, powers and authority.

Provision for revising constitution.

X. In order the more effectually to adhere to the principles of the constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary, the general court which shall be in the year of our Lord one thousand seven hundred and ninety-five, shall issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity or expediency of revising the constitution, in order to amendments.

And if it shall appear, by the returns made, that two-thirds of the qualified voters throughout the state, who shall assemble and vote in consequence of the said precepts, are in favor of such revision or amendment, the general court shall issue precepts, or direct them to be issued from the secretary's office to the several towns to elect delegates to meet in convention for the purpose aforesaid.

The said delegates to be chosen in the same manner and proportion as their representatives in the second branch of the legislature are by this constitution to be chosen.]

Provision for preserving and publishing this constitution.

XI. This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this commonwealth, in all future editions of the said laws.

## ARTICLES OF AMENDMENT.

Bill, &c. not approved within five days, not to become a law, if legislature adjourn in the mean time.  
3 Mass. 567.  
See Const., Ch. 1, § 1, art. 2.

ARTICLE I. If any bill or resolve shall be objected to, and not approved by the governor; and if the general court shall adjourn within five days after the same shall have been laid before the governor for his approbation, and thereby prevent his returning it with his objections, as provided by the constitution, such bill or resolve shall not become a law, nor have force as such.

ART. II. The general court shall have full power and authority to erect and constitute municipal or city governments, in any corporate town or towns in this commonwealth, and to grant to the inhabitants thereof such powers, privileges and immunities, not repugnant to the constitution as the general court shall deem necessary or expedient for the regulation and government thereof and to prescribe the manner of calling and holding public meetings of the inhabitants, in wards or otherwise for the election of officers under the constitution, and the manner of returning the votes given at such meetings. Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants, nor unless it be with the consent, and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose. And provided also, that all by-laws made by such municipal or city government shall be subject, at all times to be annulled by the general court.

General court empowered to charter cities.

112 M. 200

Proviso.

ART. III. Every male citizen of twenty-one years of age and upwards, (excepting paupers and persons under guardianship) who shall have resided within the commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months next preceding any election of governor, lieutenant-governor, senators or representatives, and who shall have paid, by himself or his parent, master or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed upon him in any town or district of this commonwealth; and also, every citizen who shall be, by law, exempted from taxation, and who shall be, in all other respects, qualified as above mentioned, shall have a right to vote in such election of governor, lieutenant-governor, senators and representatives; and no other person shall be entitled to vote in such elections.

Qualifications of voters for governor, lieutenant-governor, senators and representatives.  
11 Pick. 538.  
See amendments, Art. XX.

ART. IV. Notaries public shall be appointed by the governor in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor with the consent of the council, upon the address of both houses of the legislature.

Notaries public, how appointed and removed.

[In case the office of secretary or treasurer of the commonwealth shall become vacant from any cause during the recess of the general court, the governor, with the advice and consent of the council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same until a successor shall be appointed by the general court.]

Vacancies in the offices of secretary and treasurer how filled in case, &c.  
See amendments, Art. XVII.

Whenever the exigencies of the commonwealth shall require the appointment of a commissary-general, he shall be nominated, appointed and commissioned in such manner as the legislature may, by law, prescribe.

Commissary-general may be appointed, in case, &c.

All officers commissioned to command in the militia may be removed from office in such manner as the legislature may, by law, prescribe.

Militia officers, how removed.

ART. V. In the elections of captains and subalterns of the militia, all the members of their respective companies, as well those under as those above the age of twenty-one years, shall have a right to vote.

Who may vote for captains and subalterns.

ART. VI. Instead of the oath of allegiance prescribed by the constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military under the government of this commonwealth, before he shall enter on the duties of his office, to wit:—

Oath to be taken by all officers; See Const. Chap. VI. Art. 1.

“I, A. B., do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. So help me God.”

Provided, That when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word “swear” and inserting instead thereof the word “affirm”; and omitting the words “So help me God,”

or affirmation, in case, &c.

and subjoining, instead thereof, the words "This I do under the pains and penalties of perjury."

Tests abolished.

ART. VII. No oath, declaration or subscription, excepting the oath prescribed in the preceding article and the oath of office, shall be required of the governor, lieutenant-governor, councillors, senators or representatives, to qualify them to perform the duties of their respective offices.

Incompatibility of offices.

ART. VIII. No judge of any court of this commonwealth, (except the court of sessions) and no person holding any office under the authority of the United States (postmasters excepted) shall, at the same time, hold the office of governor, lieutenant-governor, or councillor, or have a seat in the senate or house of representatives of this commonwealth; and no judge of any court in this commonwealth (except the court of sessions) nor the attorney-general, solicitor-general, county-attorney, clerk of any court, sheriff, treasurer and receiver-general, register of probate, nor register of deeds, shall continue to hold his said office after being elected a member of the Congress of the United States, and accepting that trust; but the acceptance of such trust by any of the officers aforesaid shall be deemed and taken to be a resignation of his said office; and judges of the courts of common pleas shall hold no other office under the government of this commonwealth, the office of justice of the peace and militia offices excepted.

Amendments to constitution, how made.

ART. IX. If, at any time hereafter any specific and particular amendment or amendments to the constitution be proposed in the general court, and agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two houses, with the yeas and nays taken thereon, and referred to the general court then next to be chosen, and shall be published; and if, in the general court next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two-thirds of the members of the house of representatives present, and voting thereon; then it shall be the duty of the general court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the constitution of this commonwealth.

Commencement of political year,

ART. X. The political year shall begin on the first Wednesday of January instead of the last Wednesday of May, and the general court shall assemble every year on the said first Wednesday of January, and shall proceed at that session to make all the elections, and do all the other acts which are by the constitution required to be made and done at the session which has heretofore commenced on the last Wednesday of May. And the general court shall be dissolved on the day next preceding the first Wednesday of January, without any proclamation or other act of the governor. But nothing herein contained shall prevent the general court from assembling at such other times as they shall judge necessary, or when called together by the governor. The governor, lieutenant-governor and councillors, shall also hold their respective offices for one year next following the first Wednesday of January, and until others are chosen and qualified in their stead.

Meetings for the choice of governor, lieutenant-governor, &c. See amendments, Art. XV.

[The meeting for the choice of governor, lieutenant-governor, senators and representatives shall be held on the second Monday of November in every year; but meetings may be adjourned if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no further. But in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November.]

All the other provisions of the constitution respecting the elections and proceedings of the members of the general court, or of any other officers or persons whatever, that have reference to the last Wednesday



of May, as the commencement of the political year, shall be so far altered as to have like reference to the first Wednesday of January.

This article shall go into operation on the first day of October next following the day when the same shall be duly ratified and adopted as an amendment of the constitution; and the governor, lieutenant-governor, councillors, senators, representatives and all other state officers, who are annually chosen, and who shall be chosen for the current year, when the same shall go into operation, shall hold their respective offices until the first Wednesday of January then next following, and until others are chosen and qualified in their stead, and no longer. And the first election of the governor, lieutenant-governor, senators and representatives to be had in virtue of this article shall be had conformably thereto, in the month of November following the day on which the same shall be in force, and go into operation, pursuant to the foregoing provision.

Article, when to go into operation.

All the provisions of the existing constitution inconsistent with the provisions herein contained are hereby wholly annulled.

Inconsistent provisions annulled.  
Religious freedom established. See Dec. of Rights, Art. III.

ART. XI. Instead of the third article of the bill of rights, the following modification and amendment thereof is substituted:—

"As the public worship of God and instructions in piety, religion and morality, promote the happiness and prosperity of a people, and the security of a republican government; therefore, the several religious societies of this commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society, a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract, which may be thereafter made, or entered into by such society: and all religious sects and denominations, demeaning themselves peaceably and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law."

[ART. XII. In order to provide for a representation of the citizens of this commonwealth, founded upon the principles of equality a census of the ratable polls, in each city, town and district of the commonwealth, on the first day of May, shall be taken and returned into the secretary's office, in such manner as the legislature shall provide, within the month of May, in the year of our Lord one thousand eight hundred and thirty-seven, and in every tenth year thereafter, in the month of May, in manner aforesaid, and each town or city having three hundred ratable polls at the last preceding decennial census of polls, may elect one representative, and for every four hundred and fifty ratable polls in addition to the first three hundred, one representative more.

Census of ratable polls to be taken in 1837, and decennially thereafter. See amendments, Art. XIII. and XXI. Representatives, how apportioned.

Any town having less than three hundred ratable polls shall be represented thus: The whole number of ratable polls, at the last preceding decennial census of polls, shall be multiplied by ten, and the product divided by three hundred, and such town may elect one representative as many years within ten years, as three hundred is contained in the product aforesaid.

Towns having less than 300 ratable polls, how represented.

Any city or town having ratable polls enough to elect one or more representatives, with any number of polls beyond the necessary number, may be represented as to that surplus number by multiplying such surplus number by ten and dividing the product by four hundred and fifty; and such city or town may elect one additional representative as many years within the ten years as four hundred and fifty is contained in the product aforesaid.

Fractions, how represented.

Any two or more of the several towns and districts may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns and districts respectively called for that purpose, and held previous to the first day of July in the year in which the decennial census of polls shall be taken, form themselves into a representative district, to continue until the next decennial census of polls, for the election of a representative, or representatives, and such district shall have all the rights, in regard to representation, which would belong to a town containing the same number of ratable polls.

Towns may unite into representative districts.

The governor and council shall ascertain and determine within the months of July and August, in the year of our Lord one thousand eight hundred and thirty-seven, according to the foregoing principles, the number of representatives, which each city, town and

The governor and council to determine the number of repre-

representatives to which each town is entitled.

New apportionment to be made once in every ten years.

Inconsistent provisions annulled.

Census of inhabitants to be taken in 1840, and decennially thereafter, for basis of apportionment of senators and representatives. Senatorial districts declared permanent. See amendments, Art. XXII. House of representatives, how apportioned. See amendments, Art. XXI. Small towns, how represented.

Towns may unite into representative districts.

Basis of representation, and ratio of increase.

The governor and council to apportion the number of representatives of each town once in every ten years. Councillors to be chosen from the people at large. See amendments, Art. XVI. Qualifications of councillors.

Freehold as a qualification for a seat in general court or council not required. Elections by the people to be by plurality of votes.

Time of annual election of governor and legislature.

representative district is entitled to elect, and the number of years within the period of ten years then next ensuing, that each city, town, and representative district may elect an additional representative, and where any town has not a sufficient number of polls to elect a representative each year then how many years within the ten years, such town may elect a representative, and the same shall be done once in ten years thereafter by the governor and council, and the number of ratable polls in each decennial census of polls, shall determine the number of representatives, which each city, town and representative district may elect as aforesaid, and when the number of representatives to be elected by each city, town or representative district is ascertained and determined as aforesaid, the governor shall cause the same to be published forthwith for the information of the people and that number shall remain fixed and unalterable for the period of ten years.

All the provisions of the existing constitution inconsistent with the provisions herein contained, are hereby wholly annulled.]

[ART. XIII. A census of the inhabitants of each city and town, on the first day of May, shall be taken, and returned into the secretary's office, on or before the last day of June, of the year one thousand eight hundred and forty, and of every tenth year thereafter, which census shall determine the apportionment of senators and representatives for the term of ten years.

The several senatorial districts now existing, shall be permanent. The senate shall consist of forty members; and in the year one thousand eight hundred and forty, and every tenth year thereafter, the governor and council shall assign the number of senators to be chosen in each district, according to the number of inhabitants in the same. But, in all cases, at least one senator shall be assigned to each district.

The members of the house of representatives shall be apportioned in the following manner: Every town or city containing twelve hundred inhabitants, may elect one representative; and two thousand four hundred inhabitants shall be the mean increasing number which shall entitle it to an additional representative.

Every town containing less than twelve hundred inhabitants, shall be entitled to elect a representative as many times, within ten years, as the number one hundred and sixty is contained in the number of the inhabitants of said town. Such towns may also elect one representative for the year in which the valuation of estates within the commonwealth, shall be settled.

Any two or more of the several towns may, by consent of a majority of the legal voters present at a legal meeting, in each of said towns respectively, called for that purpose, and held before the first day of August, in the year one thousand eight hundred and forty, and every tenth year thereafter, form themselves into a representative district, to continue for the term of ten years; and such district shall have all the rights in regard to representation, which would belong to a town containing the same number of inhabitants.

The number of inhabitants which shall entitle a town to elect one representative, and the mean increasing number, which shall entitle a town or city to elect more than one, and also the number by which the population of towns, not entitled to a representative every year is to be divided, shall be increased respectively, by one-tenth of the numbers above mentioned, whenever the population of the commonwealth shall have increased to seven hundred and seventy thousand, and for every additional increase of seventy thousand inhabitants, the same addition of one-tenth shall be made respectively to the said numbers above mentioned.

In the year of each decennial census, the governor and council shall, before the first day of September, apportion the number of representatives which each city, town, and representative district is entitled to elect, and ascertain how many years within ten years, any town may elect a representative, which is not entitled to elect one every year; and the governor shall cause the same to be published forthwith.]

Nine councillors shall be annually chosen from among the people at large, on the first Wednesday of January, or as soon thereafter as may be, by the joint ballot of the senators and representatives assembled in one room, who shall, as soon as may be, in like manner, fill up any vacancies that may happen in the council, by death, resignation or otherwise. No person shall be elected a councillor, who has not been an inhabitant of this commonwealth for the term of five years immediately preceding his election; and not more than one councillor shall be chosen from any one senatorial district in the commonwealth.]

No possession of a freehold or of any other estate shall be required as a qualification for holding a seat in either branch of the general court, or in the executive council.

ART. XIV. In all elections of civil officers by the people of this commonwealth, whose election is provided for by the constitution, the person having the highest number of votes shall be deemed and declared to be elected.

ART. XV. The meeting for the choice of governor, lieutenant-governor, senators and representatives, shall be held on the Tuesday next after the first Monday in November, annually; but in case of a failure to elect representatives on that day, a second meeting shall be holden for that purpose on the fourth Monday of the same month of November.

ART. XVI. Eight councillors shall be annually chosen by the inhabitants of this commonwealth, qualified to vote for governor. The election of councillors shall be determined by the same rule that is required in the election of governor. The legislature, at its first session after this amendment shall have been adopted, and at its first session after the next state census shall have been taken, and at its first session after each decennial state census thereafterwards, shall divide the commonwealth into eight districts of contiguous territory, each containing a number of inhabitants as nearly equal as practicable, without dividing any town or ward of a city, and each entitled to elect one councillor: *provided, however*, that if, at any time, the constitution shall provide for the division of the commonwealth into forty senatorial districts, then the legislature shall so arrange the councillor districts that each district shall consist of five contiguous senatorial districts, as they shall be, from time to time, established by the legislature. No person shall be eligible to the office of councillor who has not been an inhabitant of the commonwealth for the term of five years, immediately preceding his election. The day and manner of the election, the return of the votes, and the declaration of the said elections, shall be the same as are required in the election of governor. Whenever there shall be a failure to elect the full number of councillors, the vacancies shall be filled in the same manner as is required for filling vacancies in the senate; and vacancies occasioned by death, removal from the state, or otherwise, shall be filled in like manner, as soon as may be after such vacancies shall have happened. And that there may be no delay in the organization of the government on the first Wednesday of January, the governor, with at least five councillors for the time being, shall, as soon as may be, examine the returned copies of the records for the election of governor, lieutenant-governor, and councillors; and ten days before the said first Wednesday in January he shall issue his summons to such persons as appear to be chosen, to attend on that day to be qualified accordingly; and the secretary shall lay the returns before the senate and house of representatives on the said first Wednesday in January, to be by them examined; and in case of the election of either of said officers, the choice shall be by them declared and published; but in case there shall be no election of either of said officers, the legislature shall proceed to fill such vacancies in the manner provided in the constitution for the choice of such officers.

Eight councillors to be chosen by the people. See art. of amendments, XXV.

1876-222

Legislature to divide state.

Day and manner of election, &c.

Vacancies, how filled.

Organization of the government.

ART. XVII. The secretary, treasurer and receiver-general, auditor, and attorney-general, shall be chosen annually, on the day in November prescribed for the choice of governor; and each person then chosen as such, duly qualified in other respects, shall hold his office for the term of one year from the third Wednesday in January next thereafter, and until another is chosen and qualified in his stead. The qualification of the voters, the manner of the election, the return of the votes, and the declaration of the election, shall be such as are required in the election of governor. In case of a failure to elect either of said officers on the day in November aforesaid, or in case of the decease in the mean time of the person elected as such, such officer shall be chosen on or before the third Wednesday in January next thereafter from the two persons who had the highest number of votes for said offices on the day in November aforesaid, by joint ballot of the senators and representatives in one room; and in case the office of secretary, or treasurer and receiver-general, or auditor, or attorney-general, shall become vacant from any cause during an annual or special session of the general court, such vacancy shall in like manner be filled by choice from the people at large; but if such vacancy shall occur at any other time, it shall be supplied by the governor by appointment, with the advice and consent of the council. The person so chosen or appointed, duly qualified in other respects, shall hold his office until his successor is chosen and duly qual-

Election of secretary, treasurer, auditor and attorney-general by the people.

Vacancies, how filled.

To qualify within  
10 days, other-  
wise office to be  
deemed vacant.

Qualifications  
requisite.

School moneys  
not to be applied  
for sectarian  
schools.

Legislature to  
prescribe for the  
election of sher-  
iffs, registers of  
probate, &c.  
8 Gray, 1.

117 m. 603  
Reading constitu-  
tion in English  
and writing, ne-  
cessary qualifi-  
cations of voters.  
Proviso.

Census of legal  
voters and of in-  
habitants, when  
taken, &c.  
See Gen. Stat.  
ch. 20.

See 1865, 69.

House of repre-  
sentatives to  
consist of 240  
members.  
Legislature to  
apportion. &c.  
10 Gray, 613.

1876 c. 15

ified in his stead. In case any person chosen or appointed to either of the offices aforesaid, shall neglect, for the space of ten days after he could otherwise enter upon his duties, to qualify himself in all respects to enter upon the discharge of such duties, the office to which he has been elected or appointed shall be deemed vacant. No person shall be eligible to either of said offices unless he shall have been an inhabitant of this commonwealth five years next preceding his election or appointment.

ART. XVIII. All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the state for the support of common schools, shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance exclusively of its own school.

ART. XIX. The legislature shall prescribe, by general law, for the election of sheriffs, registers of probate, commissioners of insolvency, and clerks of the courts, by the people of the several counties, and that district-attorneys shall be chosen by the people of the several districts, for such term of office as the legislature shall prescribe.

ART. XX. No person shall have the right to vote, or be eligible to office under the constitution of this commonwealth, who shall not be able to read the constitution in the English language, and write his name: *provided, however*, that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any persons who shall be sixty years of age or upwards at the time this amendment shall take effect.

ART. XXI. A census of the legal voters of each city and town, on the first day of May, shall be taken and returned into the office of the secretary of the commonwealth, on or before the last day of June, in the year one thousand eight hundred and fifty-seven; and a census of the inhabitants of each city and town, in the year one thousand eight hundred and sixty-five, and of every tenth year thereafter. In the census aforesaid, a special enumeration shall be made of the legal voters; and in each city, said enumeration shall specify the number of such legal voters aforesaid, residing in each ward of such city. The enumeration aforesaid shall determine the apportionment of representatives for the periods between the taking of the census.

The house of representatives shall consist of two hundred and forty members, which shall be apportioned, by the legislature, at its first session after the return of each enumeration as aforesaid, to the several counties of the commonwealth, equally, as nearly as may be, according to their relative numbers of legal voters, as ascertained by the next preceding special enumeration; and the town of Cohasset, in the county of Norfolk, shall, for this purpose, as well as in the formation of districts, as hereinafter provided, be considered a part of the county of Plymouth; and it shall be the duty of the secretary of the commonwealth, to certify, as soon as may be after it is determined by the legislature, the number of representatives to which each county shall be entitled, to the board authorized to divide each county into representative districts. The mayor and aldermen of the city of Boston, the county commissioners of other counties than Suffolk, — or in lieu of the mayor and aldermen of the city of Boston, or of the county commissioners in each county other than Suffolk, such board of special commissioners in each county, to be elected by the people of the county, or of the towns therein, as may for that purpose be provided by law, — shall, on the first Tuesday of August next after each assignment of representatives to each county, assemble at a shire town of their respective counties, and proceed, as

soon as may be, to divide the same into representative districts of contiguous territory, so as to apportion the representation assigned to each county equally, as nearly as may be, according to the relative number of legal voters in the several districts of each county; and such districts shall be so formed that no town or ward of a city shall be divided therefor, nor shall any district be made which shall be entitled to elect more than three representatives. Every representative, for one year at least next preceding his election, shall have been an inhabitant of the district for which he is chosen, and shall cease to represent such district when he shall cease to be an inhabitant of the commonwealth. The districts in each county shall be numbered by the board creating the same, and a description of each, with the numbers thereof and the number of legal voters therein, shall be returned by the board, to the secretary of the commonwealth, the county treasurer of each county, and to the clerk of every town in each district, to be filed and kept in their respective offices. The manner of calling and conducting the meetings for the choice of representatives, and of ascertaining their election, shall be prescribed by law. Not less than one hundred members of the house of representatives shall constitute a quorum for doing business; but a less number may organize temporarily, adjourn from day to day, and compel the attendance of absent members.

Qualifications of representatives.

One hundred members a quorum.

ART. XXII. A census of the legal voters of each city and town, on the first day of May, shall be taken and returned into the office of the secretary of the commonwealth, on or before the last day of June, in the year one thousand eight hundred and fifty-seven; and a census of the inhabitants of each city and town, in the year one thousand eight hundred and sixty-five, and of every tenth year thereafter. In the census aforesaid, a special enumeration shall be made of the legal voters, and in each city said enumeration shall specify the number of such legal voters aforesaid, residing in each ward of such city. The enumeration aforesaid shall determine the apportionment of senators for the periods between the taking of the census. The senate shall consist of forty members. The general court shall, at its first session after each next preceding special enumeration, divide the commonwealth into forty districts of adjacent territory, each district to contain, as nearly as may be, an equal number of legal voters, according to the enumeration aforesaid: *provided, however*, that no town or ward of a city shall be divided therefor; and such districts shall be formed, as nearly as may be, without uniting two counties, or parts of two or more counties, into one district. Each district shall elect one senator, who shall have been an inhabitant of this commonwealth five years at least immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is chosen; and he shall cease to represent such senatorial district when he shall cease to be an inhabitant of the commonwealth. Not less than sixteen senators shall constitute a quorum for doing business; but a less number may organize temporarily, adjourn from day to day, and compel the attendance of absent members.

Census, &c.  
See 1866, 69.

Senate to consist of 40 members.

Senatorial districts, &c.

See art. of amendments, XXIV.

Qualifications of senators.

Sixteen members a quorum.

Residence of two years required of naturalized citizens, to entitle to suffrage or make eligible to office.

[ART. XXIII. No person of foreign birth shall be entitled to vote, or shall be eligible to office, unless he shall have resided within the jurisdiction of the United States for two years subsequent to his naturalization, and shall be otherwise qualified, according to the constitution and laws of this commonwealth: *provided*, that this amendment shall not affect the rights which any person of foreign birth possessed at the time of the adoption thereof; and *provided, further*, that it shall not affect the rights of any child of a citizen of the United States, born during the temporary absence of the parent therefrom.]

Vacancies in the senate.

ART. XXIV. Any vacancy in the senate shall be filled by election by the people of the unrepresented district, upon the order of a majority of the senators elected.

Vacancies in the council.

ART. XXV. In case of a vacancy in the council, from a failure of election, or other cause, the senate and house of representatives shall, by concurrent vote, choose some eligible person from the people of the

district wherein such vacancy occurs, to fill that office. If such vacancy shall happen when the legislature is not in session, the governor, with the advice and consent of the council, may fill the same by appointment of some eligible person.

Twenty-third  
article of amend-  
ments annulled.

ART. XXVI. The twenty-third article of the articles of amendment of the constitution of this commonwealth, which is as follows, to wit: "No person of foreign birth shall be entitled to vote, or shall be eligible to office unless he shall have resided within the jurisdiction of the United States for two years subsequent to his naturalization, and shall be otherwise qualified, according to the constitution and laws of this commonwealth: *provided*, that this amendment shall not affect the rights which any person of foreign birth possessed at the time of the adoption thereof; and *provided, further*, that it shall not affect the rights of any child of a citizen of the United States, born during the temporary absence of the parent therefrom," is hereby wholly annulled.

NOTE. — The Constitution of Massachusetts was agreed upon by delegates of the people, in convention, begun and held at Cambridge, on the first day of September, 1779, and continued by adjournments to the second day of March, 1780, when the convention adjourned to meet on the first Wednesday of the ensuing June. In the mean time the constitution was submitted to the people, to be adopted by them, provided two-thirds of the votes given should be in the affirmative. When the convention assembled, it was found that the constitution had been adopted by the requisite number of votes, and the convention accordingly *Resolved*, "That the said Constitution or Frame of Government shall take place on the last Wednesday of October next; and not before, for any purpose, save only for that of making elections, agreeable to this resolution." The first legislature assembled at Boston, on the twenty-fifth day of October, 1780.

The first nine Articles of Amendment were submitted, by delegates in convention assembled, November 15, 1820, to the people, and by them ratified and adopted, April 9, 1821.

The tenth Article was adopted by the legislatures of the political years 1829–30, and 1830–31, respectively, and was approved and ratified by the people, May 11, 1831.

The eleventh Article was adopted by the legislatures of the political years 1832 and 1833, respectively, and was approved and ratified by the people, November 11, 1833.

The twelfth Article was adopted by the legislatures of the political years 1835 and 1836, respectively, and was approved and ratified by the people, the fourteenth day of November, 1836.

The thirteenth Article was adopted by the legislatures of the political years 1839 and 1840, respectively, and was approved and ratified by the people, the sixth day of April, 1840, and was repealed by the twenty-sixth Amendment.

The fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth Articles were adopted by the legislatures of the political years 1854 and 1855, respectively, and ratified by the people, the twenty-third day of May, 1855.

The twentieth, twenty-first, and twenty-second Articles were adopted by the legislatures of the political years 1856 and 1857, respectively, and ratified by the people on the first day of May, 1857.

The twenty-third Article was adopted by the legislatures of the political years 1858 and 1859, respectively, and ratified by the people on the ninth day of May, 1859.

The twenty-fourth and twenty-fifth Articles were adopted by the legislatures of the political years 1859 and 1860, and ratified by the people, May, 1860.

The twenty-sixth Article was adopted by the legislatures of the political years 1862 and 1863, and ratified by the people, April, 1863.

# **GENERAL STATUTES**

**OF THE**

**COMMONWEALTH OF MASSACHUSETTS.**

COMMONWEALTH OF MASSACHUSETTS.

---

YEAR ONE THOUSAND EIGHT HUNDRED AND FIFTY-NINE.

---

AN ACT

FOR

REVISING AND CONSOLIDATING

THE

GENERAL STATUTES.

OF THE

COMMONWEALTH.

---

*acted by the Senate and House of Representatives, in General Court assembled, and by the majority of the same, in manner following, that is :*



# PART I.

## OF THE INTERNAL ADMINISTRATION OF THE GOVERNMENT.

### TITLE I.

#### OF THE JURISDICTION OF THE COMMONWEALTH, LEGISLATURE, STATUTES, PUBLIC REPORTS, AND DOCUMENTS, STATE LIBRARY AND OTHER PUBLIC PROPERTY.

CHAPTER 1. — Of the Jurisdiction of the Commonwealth and places ceded to the  
United States.

CHAPTER 2. — Of the Legislature.

CHAPTER 3. — Of the Statutes.

CHAPTER 4. — Of Public Reports and Documents.

CHAPTER 5. — Of the State Library and other Public Property.

### CHAPTER 1.

[Additional acts ceding jurisdiction: 1862, 196; 1864, 77, 238; 1865, 109; 1867, 35, 259, 238, 314, 315;  
1868, 249, 292, 238, 323; 1869, 458; 1870, 327, 396; 1871, 82, 238, 367; 1872, 309.] 1873, 189-1874, 130, 3

#### OF THE JURISDICTION OF THE COMMONWEALTH AND PLACES CEDED TO THE UNITED STATES.

##### SECTION

1. Territorial limits of the commonwealth, and counties.
2. Jurisdiction of the commonwealth.
3. Places ceded to the United States and subject to concurrent jurisdiction.
4. Officers of the coast survey may enter upon lands, erect stations, &c.

##### SECTION

5. County commissioners to assess damages on petition of either party.
6. Commissioners to file report, &c. Appeal Trial. 1875, 35
7. Tender, and costs after refusal.
8. Costs, how taxed.
9. Penalty for injuring signals, &c. 1873 c. 4

SECTION 1. The territorial limits of this commonwealth extend one marine league from its sea-shore at low-water mark. When an inlet or arm of the sea does not exceed two marine leagues in width, between its headlands, a straight line from one headland to the other is equivalent to the shore line. The boundaries of counties bordering on the sea extend to the line of the state as above defined. The jurisdiction of counties separated by waters within the jurisdiction of the state is concurrent upon and over such waters.

Territorial limits  
of the common-  
wealth and coun-  
ties.  
1869, 239.

SECT. 2. The sovereignty and jurisdiction of the commonwealth extend to all places within the boundaries thereof; subject to the rights of concurrent jurisdiction granted over places ceded to the United States.

Jurisdiction of  
the common-  
wealth.  
R. S. 1, § 1.

SECT. 3. The several places ceded to the United States for forts, arsenals, dock-yards, light-houses, hospitals, or other purposes, and over which concurrent jurisdiction has been granted to the United States,

Places ceded to  
the United  
States and sub-  
ject to concur-

rent jurisdiction.  
R. S. 1, § 2.  
8 Mass. 72.  
17 Pick. 298.  
1 Met. 580.  
1790, 4.

shall continue to be subject to such concurrent jurisdiction, according to the tenor and effect of the respective laws by which they were ceded, that is to say:—

The several public light-houses with the lands and tenements thereunto belonging: the light-house on Light-House Island in the harbor of Boston; the two light-houses on Thatcher's Island in the county of Essex; the two light-houses on the north end of Plumb Island in the county of Essex; the light-house on the Gurnet Head in the county of Plymouth; the light-house on Sandy Point in the county of Nantucket; also, the four buoys at the mouth of Merrimack River, namely—one on the Hum Sands, one on the Sunken Rocks, one on the Ganway Rock, and one on the Half-Tide Rocks; also the beacon on the spit of sand near the light-house in the harbor of Boston:

1796, 18.

The light-house situate near the entrance of the harbor of Nantucket:

1796, 25.

The several tracts of land for the light-houses authorized by congress to be erected upon Baker's Island and Cape Cod:

1798, 18.  
1807, 125.  
1846, 16.

Castle Island, Governor's Island, George's Island, and Lovel's Island, in the harbor of Boston; and a tract of land in Springfield:

1798, 60.

A tract of land for a light-house at that part of Martha's Vineyard called Gay-Head:

1800, 7.  
1831, 45.

A tract of land for light-houses on Wigwam Point and Eastern Point in Gloucester:

1800, 17.

A tract of land for a light-house at the end of Clarke's Point in New Bedford:

1800, 26.

A tract of land for a navy-yard in Charlestown:

1825, 8.

Tracts of land for light-houses at Cape Poge:

1800, 70.

A tract of land on Martha's Vineyard and the building erected thereon as a hospital:

1838, 133.

A tract of land for light-houses at or near the entrance of Chatham harbor on Cape Cod:

1808, 66.

A tract of land for a light-house at the entrance of the harbor of Scituate:

1806, 21, § 79.

The rocks and flats under the piers in Merrimack River called the Half-Tide Rocks and North Rocks:

1810, 54.

A tract of land in Watertown for erecting forts, magazines, arsenals, dock-yards, and other needful buildings:

1816, 1.

Tracts of land for light-houses on Race Point in Provincetown, at or near Tarpaulin Cove on Nashaun Island, and on Point Gammon in Yarmouth:

1816, 15.

A tract of land for a light-house on the West Chop of Holmes' Hole on the island of Martha's Vineyard:

1816, 47.

Half-Way Rock in Boston Bay for a beacon: also Bird Island in Buzzard's Bay for a light-house; and a tract of land for a light-house on Long Island Head in Boston harbor:

1817, 7.

Ten Pound Island in the harbor of Gloucester for a light-house:

1817, 2.

A part of Tinker's Island, Marblehead Rock, and the East Rock of Cat Island:

1819, 69.

A tract of land for a light-house on the Island of Kutta-Hunk:

1820, 3.

A tract of land for a light-house on Monamoy Point in the county of Barnstable:

1821, 35.

Tracts of land in Chelsea for hospitals and a depot of ordnance stores:

1822, 23.

Tracts of land for light-houses on Long Point in Provincetown; and on Sandy Neck in Barnstable:

1823, 12.

Dumpling Rock in Buzzard's Bay, and tracts of land on Nobsque Point in Falmouth and at the entrance of Edgartown Harbor; for light-houses:

1825, 181.

1827, 66.

1848, 167.

1826, 38.

A tract of land near the mouth of the Merrimack River, in Newbury, for a pier or breakwater:

1828, 63.

1828, 30.

- A tract of land for a light-house on West Chop in Tisbury on Martha's Vineyard : 1830, 111.
- The place called Nix's Mate in the harbor of Boston for a beacon : 1832, 41.  
1834, 39.
- A tract of land, not exceeding four acres at the Neck in Marblehead ; for a light-house : 1835, 98.
- Straitsmouth Island in the harbor of Gloucester for a light-house : 1835, 151.
- Tracts of land for light-houses in Nantucket and at Nid's Point in Rochester : 1838, 138.
- Tracts of land for light-houses on Ipswich Beach in Ipswich, and near Nauset Beach in Eastham, and on Mayo's Beach in Wellfleet : 1838, 164.
- The place called Minot's Rock or Ledge in Massachusetts Bay for a light-house : 1847, 109.
- A tract of land not exceeding one-quarter of an acre, above high-water mark, near the Old Fort in Fairhaven, and one of the Elizabeth Islands called the Sow and Pigs lying off the south-west side of the Island of Kutta-Hunk : 1847, 285.
- A tract of land for a light-house, not exceeding two acres, on Palmer's Island in the harbor of New Bedford : and a tract of land for a light-house, not exceeding six acres, on Wing's Neck in Sandwich : 1849, 14.
- A tract of land for a light-house in Truro : 1849, 40.
- A tract of land on Great Brewster Island in the harbor of Boston : 1849, 45.
- A tract of land for a light-house at Hyannis in Barnstable : 1849, 67.
- A tract of land for a light-house at Sancoty Head in Nantucket : 1849, 100.
- Three tracts of land, not exceeding one acre each, at the head of Holmes' Hole harbor in Tisbury, for light-houses. 1853, 72.
- A tract of land for a light-house at Bass River in the county of Barnstable : 1853, 288.
- Such tracts of land in Provincetown and Truro as may be used and improved for the preservation of Cape Cod harbor : 1853, 296, 306.
- Such tracts of land in Falmouth as may be necessary for the construction and maintenance of a sea wall in the harbor of Great Woods Hole : 1853, 306.
- Egg Rock Island near Nahant ; and a site for a light-house in Truro : 1855, 17.
- Sites for light-houses on or near the Point of Rocks in Westport ; and at the Spit in the harbor of Boston : 1855, 17.
- A site for a beacon on Point Alderton Bar in the harbor of Boston : 1855, 17.
- A tract of land in Gloucester for a custom-house : 1855, 21.
- A tract of land in Barnstable for a custom-house : 1855, 127.
- Egg Island Shoal in the harbor of New Bedford ; and such tracts of land on Clarke's Point in New Bedford as the United States deem needful for the purposes of military defence, and over the contiguous shores, flats, and waters, within four hundred yards from low-water mark : 1856, 100.  
1857, 119.
- A tract of land not exceeding six acres on Billingsgate Island for a light-house : *provided*, the United States make and file in the office of the secretary of the commonwealth a suitable plan of said land within one year from the purchase of the same : 1857, 116.  
1822, 1.
- Such tract of land as the United States shall purchase in Cohasset for a light-keeper's house, warehouse, and wharf, for the convenience of Minot's Ledge Light : 1858, 42.
- A tract of land, not exceeding three acres, for a light-house and keeper's house on Point of Rocks at the entrance of Westport harbor : 1858, 53.
- A lot of land in Boston with the buildings thereon, known as the "Masonic Temple," with land adjacent thereto not exceeding twenty-five thousand feet, for a court-house. 1858, 157.
- SECT. 4. Persons employed under an act of the congress of the United States passed the tenth day of February in the year eighteen hundred and seven, and the supplement thereto, may enter upon lands within this state for any purpose which may be necessary to effect the objects of said act, and may erect works, stations, buildings, or appendages, requisite for that purpose, doing no unnecessary injury.

1858-8-323  
1875-327  
176-82  
1845, 192, § 1.  
U. S. statutes, 1752, 187  
1807, 8  
1813, 58.  
1822, 191, § 2

County commis-  
sioners to assess  
damages on pe-  
tition of either  
party.  
1845, 192, §§ 2, 3.

SECT. 5. If the parties interested cannot agree upon the amount to be paid for damages caused thereby, either of them may petition the commissioners having jurisdiction in the county in which the land lies, who shall appoint a time for a hearing as soon as may be and order at least fourteen days' notice to all persons interested, and, with or without a view of the premises as they may determine, hear the parties and assess the damages.

Commissioners to  
file report, &c.  
Appeal.  
Trial.  
1845, 192, § 4.  
1855, 449.  
1859, 196.

SECT. 6. The commissioners shall file in the office of the clerk of the courts, or, in the county of Suffolk, in the office of the clerk of the superior court for civil business, a report of their doings, which shall be conclusive unless one of the parties within thirty days after the term of the superior court held next after the filing of the report files a petition for trial; in which case, after notice to the opposite party, a trial shall be had in said court in the manner in which other civil cases are tried.

Tender, and costs  
after refusal.  
1845, 192, § 5.

SECT. 7. The person so entering upon land may tender to the party injured amends therefor, and if the damages finally assessed do not exceed the amount tendered, the person entering shall recover costs; otherwise the prevailing party shall recover costs.

Costs, how taxed.  
1845, 192, § 6.

SECT. 8. Costs shall be taxed and allowed as if the proceedings were an appeal from the decision of the commissioners, in the same manner as they are taxed on appeals from judgments of justices of the peace.

Penalty for injur-  
ing signals, &c.  
1845, 192, § 7.  
1852, 312.

SECT. 9. Whoever wilfully injures, defaces, or removes, any signal, monument, building, or appendage thereto, erected, used, or constructed, under said acts of congress, shall forfeit the sum of fifty dollars for each offence; and shall be liable for damages sustained by the United States, to be recovered in an action of tort.

## CHAPTER 2.

### OF THE LEGISLATURE.

#### ORGANIZATION OF THE HOUSE OF REPRESENTATIVES.

##### SECTION

1. Secretary to make and deliver to sergeant-at-arms lists of persons returned.
2. Who are to be admitted to take seats as members.
3. When, and by whom, house to be called to order; and who shall preside.
4. Persons having certificates, &c., but not on list to present credentials to presiding officer.
5. Clerk to act until successor is chosen.
6. Clerk may appoint a deputy and assistant.
7. Oath of clerk, deputy and assistant.

#### APPLICATIONS TO THE LEGISLATURE.

8. Notice on petitions affecting individuals or private corporations, how given.
9. on petitions affecting cities and towns.
10. in case of persons applying for act of incorporation, &c.
11. to specify amount of capital stock applied for.
12. Proof of publication of notices, how made.

#### COMPENSATION OF MEMBERS AND OFFICERS.

##### SECTION

13. Compensation of senators and representatives, when and how paid.
14. \$3 a day to be deducted from the pay of members absent without excuse.
15. Compensation of president and speaker.
16. Books, &c., not to be ordered for members at the charge of the commonwealth.
17. Salaries of clerks.
18. of chaplains and preacher of election sermon.
19. Compensation of door-keepers, messengers, and pages, when and how paid.

#### MISCELLANEOUS PROVISIONS.

20. Members of committees may administer oaths.
21. Journals of the two houses to be in the custody of the clerks.
22. Secretary to cause bills and resolves to be engrossed on parchment: acts and resolves to be bound, &c.
23. Members of legislature not eligible to certain offices.
24. General court to suspend business on certain days.

*Mileage*  
1875-48

## ORGANIZATION OF THE HOUSE OF REPRESENTATIVES.

SECTION 1. The secretary of the commonwealth shall receive and examine the certificates of the election of representatives to the general court returned into his office, and shall make a list of the persons therein named. On the Tuesday next preceding the first Wednesday of January annually he shall deliver to the sergeant-at-arms a list of the persons then returned, and upon receiving any further certificates before the house is called to order he shall immediately make and deliver to the sergeant-at-arms a like list. He shall also transmit the certificates, with a list of all persons returned, to the house of representatives as soon as the members are called to order.

Secretary to make and deliver to sergeant-at-arms, &c., lists of persons returned.  
1844, 143, §§ 4, 6.  
See Ch. 8, § 19.

SECT. 2. The persons whose names are borne on the lists delivered to the sergeant-at-arms, shall be admitted by him to take seats as members in the representatives' chamber on said first Wednesday of January, or at any time afterwards.

Who may take seats as members.  
1844, 143, § 5.  
See Ch. 8, § 19.

SECT. 3. On the first Wednesday of January in each year, between the hours of ten in the forenoon and twelve at noon, the persons so returned and admitted as members into the representatives' chamber shall be called to order by the eldest senior member present; and such member shall be the presiding officer of the house until a speaker is chosen, or the house otherwise direct.

When, and by whom, house to be called to order; and who shall preside.  
1844, 143, § 7.  
See Ch. 8, § 19.

SECT. 4. Any person having a certificate or other documentary evidence of his election as a representative, whose name is not on said list, may after the house is called to order present the same to the presiding officer or speaker, if one is chosen, who shall communicate the same to the house for their order thereon; but such person shall not take a seat as a member until permitted so to do by the house.

Persons having certificates, &c., but not on list, to present credentials to presiding officer.  
1844, 143, § 8.  
See Ch. 8, § 19.

SECT. 5. The clerk of the house for any year, shall act as clerk of the next succeeding house until a clerk thereof is chosen and sworn.

Clerk to act until successor is chosen.  
1844, 143, § 9.  
Clerk may appoint a deputy and assistant.  
1844, 143, § 10.

SECT. 6. The clerk or acting clerk may in writing appoint a deputy for three days only, in case of sickness, or necessary detention, or of leave of absence from the house. He may also appoint an assistant, if necessary, subject to the approval of the house.

SECT. 7. The clerk, deputy-clerk, and assistant, shall take the oath of office prescribed by the constitution.

Oath of clerk, &c.  
Const. Ch. 6.  
Art. I.  
1844, 143, § 11.

## APPLICATIONS TO THE LEGISLATURE.

[See 1862, 91; 1895, 245; 1871, 381, § 11.]

SECT. 8. Whoever intends to present to the general court a petition affecting the rights and interests of individuals or private corporations, shall give notice thereof by publishing a copy of the petition four weeks successively in some newspaper published in the counties where such individuals reside or in which such corporations are established; the last of said publications to be at least fourteen days before such session of the general court. Such newspaper shall be designated by the petitioners and approved by the secretary of the commonwealth.

Notice on petitions affecting individuals or private corporations, how given.  
1857, 261, § 1.

SECT. 9. Whoever intends to present a petition affecting the rights of a city or town, shall cause a copy to be served upon the city or town by a person not a party to or interested in said petition, and shall give notice thereof in the manner provided in the preceding section, the service of the copy to be at least fourteen days before the Tuesday next after the first Monday in the month of November preceding the session at which the petition is to be presented.

on petitions affecting cities and towns.  
1857, 261, § 2.  
See 1862, 91.

SECT. 10. Persons intending to apply for an act of incorporation and corporations intending to apply for an alteration or extension of their charter, shall give notice of such intended application by an advertisement, at least four weeks immediately preceding the session at which the application is to be made, in some newspaper printed in the county

in case of persons applying for act of incorporation, &c.  
1857, 261, § 3.

where such corporations are, or are intended to be, established; such newspaper shall be designated and approved as provided in section eight.

to specify  
amount of capital  
stock applied for.  
1857, 261, § 4.

SECT. 11. The notice of an application for an act of incorporation shall specify the amount of capital stock required; and if the notice is for an alteration or extension of any charter already granted, it shall specifically state the same.

Proof of publica-  
tion of notices,  
how made.  
1857, 261, § 5.

SECT. 12. Proof of the publication and service of the notice required in the preceding sections may be made by the affidavit of the printer or publisher of the newspaper in which such publication is made and of the person making such service respectively; which affidavits and the petitions to which they relate shall be presented to the general court within the first ten days of the session.

See 1862, 91, § 3.

#### COMPENSATION OF MEMBERS AND OFFICERS.

[Compensation re-established 1871, 190; 1872, 7, 828.]

Compensation of  
senators and rep-  
resentatives.  
when and how  
paid.  
1853, 2, § 1.  
1861, 160.  
(It.) Repealed  
by 1865, 228.

SECT. 13. (R.) [Each member of the senate and house of representatives shall receive three hundred dollars for the regular annual session for which he is elected, and one dollar for every five miles travel once in each session from his place of abode to the place of the sitting of the general court, to be paid as follows: on the first day of the session, he shall receive his mileage, on the first day of each month thereafter he shall receive two dollars a day until the sum of three hundred dollars shall have been paid him, and on the last day of the session he shall receive the balance due him.]

\$3 a day to be  
deducted from  
the pay of mem-  
bers absent with-  
out excuse.  
1858, 2, § 2.  
(It.) Repealed  
1865, 228.

SECT. 14. (R.) [The treasurer or other officer charged with the payment of the members shall deduct from the compensation of each member three dollars for each day that he has been absent, unless his absence shall have been excused by the house of which he is a member; and the respective clerks of the senate and house upon the written statement of members shall certify to the treasurer or such other officer the number of days of each member's attendance, which statements shall be preserved in the office of the treasurer.]

Compensation of  
president and  
speaker  
1858, 2, § 3.

SECT. 15. The president of the senate and speaker of the house shall receive double the compensation provided for senators and representatives, to be paid in the same manner.

Books, &c., not  
to be ordered,  
&c.  
1858, 2, § 4.

SECT. 16. No periodicals, publications, or books, other than those printed for the use of the legislature, shall be ordered for members at the charge of the commonwealth.

Salaries of clerks.  
1858, 2, § 5.  
See 1867, 1, 305.

SECT. 17. The clerks of the senate and house shall each receive an annual salary of two thousand dollars, to be paid quarterly, in full for all the duties required of and performed by said clerks and their assistants, including the preparation of an index and duplicate copy of the journals.

of chaplains  
and preacher.  
1858, 2, § 6.  
Resolves 1859, 59.  
(It.) Repealed  
1865, 228.

SECT. 18. (R.) [The chaplains of the senate and house shall each receive an annual salary of two hundred dollars, to be paid in monthly payments on the first day of each month during the session, at the rate of two dollars a day, and any remaining balance on the last day of the session. The preacher of the election sermon shall receive one hundred dollars.]

See 1872, 7.

Compensation of  
door-keepers,  
messengers, and  
pages.  
when and how  
paid.  
1858, 2, § 7.

SECT. 19. (R.) [Each door-keeper and messenger of the senate and house shall receive the sum of three hundred dollars, and each page of the senate and house the sum of two hundred dollars, in full for all services required of them at the regular annual session of the legislature. Such sums shall be paid monthly, at the rate of two dollars a day for each door-keeper or messenger and one dollar and fifty cents a day for each page until said sums of three hundred dollars and two hundred dollars, have been paid; and on the last day of the session he shall receive the balance due him.]

(It.) Repealed  
1865, 228.

See 1872, 7.

1876 c. 28

173 c. 372 883.4

c. 377 § 2

## MISCELLANEOUS PROVISIONS.

[See 1865, 156: 1868, 87.]

SECT. 20. Senators and representatives acting as members of a committee of the legislature may administer oaths to persons examined before the committee.

SECT. 21. The journals, files, papers, and documents, appertaining to the senate and house of representatives and their proceedings, shall be in the custody of their respective clerks; and copies certified by them shall be evidence in like manner as the originals.

SECT. 22. All bills and resolves passed to be engrossed shall, under the direction of the secretary of the commonwealth, be fairly engrossed on parchment in a plain and legible hand-writing without interlineation, and with a margin of not less than one and a half inches wide on each side; each sheet on which bills are engrossed to be twenty-two inches long and sixteen inches wide; and each sheet on which resolves are engrossed to be sixteen inches long and eleven inches wide. After every session of the general court the secretary shall cause the acts and resolves of the session to be neatly and strongly bound, in separate volumes of convenient size, lettered on the back, with a designation of the contents and legislative year.

SECT. 23. No senator or representative shall, during the term for which he is elected, be eligible to any office under the authority of this commonwealth, created during such term, except an office to be filled by vote of the people. 1 Allen, 552. See 1861, 219, § 19. 1867, 357, § 2. 1868, 24.

SECT. 24. The general court shall hold no session for the transaction of ordinary business on Thanksgiving, Fast, or Christmas days, the twenty-second day of February, the fourth day of July, nor on the following day when either of the two days last mentioned occurs on Sunday, and the public offices shall be closed on said days.

Members of committees may administer oaths. R. 8, 2, § 10. Journals of the two houses to be in the custody of the clerks. 1844, 153.

Secretary to cause bills and resolves to be engrossed on parchment; — acts and resolves to be bound, &c. R. 8, 13, § 8. 1866, 24.

Members of legislature not eligible to certain offices. 1867, 191.

General court to suspend business on certain days. 1866, 113, § 1.

1875-177

## CHAPTER 3.

## OF THE STATUTES.

## PROMULGATION OF THE LAWS.

## SOURCES

1. Laws, how promulgated.
2. how distributed.
- 3 Secretary to publish, apportion, and distribute, copies of the general laws and resolves in a pamphlet form.
- 4 Publication of laws, &c., in newspapers.
5. Acts of incorporation deemed public acts.
- 6 Statutes, when to take effect.

## CONSTRUCTION OF STATUTES.

## 7. Rules for construing statutes: —

- 1st, Words and phrases to be construed according to usage, unless technical, &c.
- 2d, Singular and plural number, masculine gender, &c.
- 3d, Joint authority to be exercised by majorities.

- 4th, "Annual meeting."
- 5th, "Grantor" and "grantee."
- 6th, "Highway."
- 7th, "Inhabitant."
- 8th, "Insane person," "lunatic," and "spendthrift."
- 9th, "Issue."
- 10th, "Land," "lands," and "real estate."
- 11th, "Month" and "year."
- 12th, "Oath" and "sworn."
- 13th, "Person."
- 14th, "Preceding" and "following."
- 15th, "Seal."
- 16th, "State" and "United States."
- 17th, "Town."
- 18th, "Place."
- 19th, "Will."
- 20th, "Written" and "in writing"
- 21st, "By-law" and "ordinance."
- 22d, "Sworn," as applied to public officers.

## PROMULGATION OF THE LAWS.

SECTION 1. The secretary of the commonwealth at the close of each session of the general court shall collate and cause to be printed in one

Laws, how promulgated. Const. ch. 6, art. 11.

R. S. 2, § 1.  
1861, 266, § 4.  
Resolves  
1812, 76.  
1839, 83.  
See 1866, 156.  
1866, 65, § 1.  
1869, 236, § 1.  
Laws, how distributed.  
R. S. 2, § 2.  
See 1866, 65, § 2.  
1866, 195, § 2.  
1872, 329.

volume, in style and arrangement as heretofore, all the acts and resolves passed during such session, with the governor's address and messages, the constitution of the commonwealth, a list of names changed and returned during the preceding year by the probate courts, and a list of the officers of the civil government, with an index.

SECT. 2. The secretary shall deposit in his office one copy of the volumes so published; and immediately after their publication, distribute copies as follows:

To the clerk of the senate, for the use of the senate, twelve copies:

To the clerk of the house of representatives, for the use of the house, twenty-four copies:

To the librarian of the state library, for the use of the library, five copies:

To the following officers and persons, one copy each:

The governor; the lieutenant-governor: each member of the council, senate, and house of representatives; the attorney-general; the auditor of accounts; the treasurer and receiver-general; the adjutant-general; the masters in chancery; the judges, clerks, and registers, of the judicial courts; the district-attorneys; the county commissioners; the sheriffs and keepers of jails; the registers of deeds; the keepers of the houses of correction; the warden of the state prison; the county treasurers; the several clerks of cities and towns, for the use of such places; Harvard University, for the law library; Harvard University; Williams College; Amherst College; Tufts College; Historic-Genealogical Society; trustees of the Museum of Comparative Zoölogy; the American Academy of Arts and Sciences; the Massachusetts Historical Society; the Boston Athenæum; the American Antiquarian Society, in Worcester; the Pilgrim Society, in Plymouth; the Old Colony Historical Society, in Taunton; the Law Library Societies in each county; the judges of the supreme court of the United States; the judge of the district court of the United States for the district of Massachusetts; the clerk of the courts of the United States for the district of Massachusetts:

The secretary of state of the United States, four copies:

The secretary of each state of the Union, for the use of the state, three copies:

To the library of congress, three copies:

Secretary to distribute general laws, &c.  
Resolves of 1847, 89.  
1850, 89.  
See 1866, 156.  
(R.) Repealed  
1866, 65.

SECT. 3. (R.) [The secretary shall immediately after the close of each session cause to be published in a pamphlet form such number of copies of the general laws and resolves as will supply each family in the commonwealth with one copy, or one copy to each eight inhabitants, and the secretary shall cause the same to be apportioned according to the census and sent to the clerks of the several cities and towns for distribution.]

Publication of laws, &c., in newspapers.  
Resolves of 1857, 24.  
See 1866, 156, 198.  
Acts of incorporation deemed public acts.  
R. S. 2, § 3.  
4 Met. 216.  
Statutes when to take effect.  
R. S. 2, §§ 4, 5.  
10 Mass. 230.  
3 Gray, 606.  
6 Gray, 316.  
See 1864, 267.

SECT. 4. The secretary shall publish the general laws and other official information intended for the public in such newspaper in the commonwealth as he may select, but the annual expense thereof shall not exceed three hundred dollars.

SECT. 5. All acts of incorporation shall be deemed public acts, and, as such, may be declared on and given in evidence.

SECT. 6. Every statute shall take effect at the same time throughout the state, and, if it does not expressly prescribe the time when it shall go into operation, shall take effect on the thirtieth day next after the day on which it is approved by the governor, or otherwise passed and approved conformably to the provisions of the constitution.

#### CONSTRUCTION OF STATUTES.

Rules for construing statutes.  
R. S. 2, § 6.

SECT. 7. In the construction of statutes the following rules shall be observed, unless such construction would be inconsistent with the mani-



fest intent of the legislature or repugnant to the context of the same statute, that is to say: See 1869, 410.

First. Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning. Words and phrases to be construed according to usage, &c. 7 Allen, 286, 304. 10 Allen, 157.

Second. Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular, and words importing the masculine gender may be applied to females. Singular and plural number, masculine gender, &c. 105 Mass. 35.

Third. Words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or persons. 5 Cush. 272. 7 Gray, 121. 16 Gray, 343. Joint authority, how exercised. 6 Met. 343.

Fourth. The words "annual meeting," when applied to towns, shall mean the annual meeting required by law to be held in the months of February, March, or April. "Annual meeting." 1837, 52.

Fifth. The word "grantor" may include every person from or by whom a freehold estate or interest passes in or by any deed; and the word "grantee" may include every person to whom such estate or interest passes in like manner. "Grantor" and "grantee." R. S. 60, § 32.

Sixth. The word "highway" may include county bridges; and shall be equivalent to the words "county way," "county road," and "common road." "Highway."

Seventh. The word "inhabitant" may be construed to mean a resident in any city or town. "Inhabitant." 6 Allen, 425. 16 Gray, 430.

Eighth. The words "insane person" and "lunatic" shall include every idiot, non compos, lunatic, insane, and distracted person; and the word "spendthrift" shall include every one who is liable to be put under guardianship on account of excessive drinking, gaming, idleness, or debauchery. "Insane person," "lunatic," and "spendthrift." R. S. 79, § 34.

Ninth. The word "issue," as applied to the descent of estates, shall include all the lawful lineal descendants of the ancestor. "Issue." R. S. 61, § 13. 103 Mass. 238.

Tenth. The words "land" or "lands" and the words "real estate" shall include lands, tenements, hereditaments, and all rights thereto and interests therein. "Land," "lands," and "real estate." R. S. 60, § 32.

Eleventh. The word "month" shall mean a calendar month; and the word "year" a calendar year, unless otherwise expressed; and the word "year" alone shall be equivalent to the expression "year of our Lord." "Month" and "year." 14 Gray, 87.

Twelfth. The word "oath" shall include "affirmations" in cases where by law an affirmation may be substituted for an oath, and in like cases the word "sworn" shall include the word "affirm." "Oath" and "sworn."

Thirteenth. The word "person" may extend and be applied to bodies politic and corporate. 4 Cush. 589. 12 Cush. 59. "Person." 3 Cush. 45.

Fourteenth. The words "preceding" and "following," when used by way of reference to any section of these statutes, shall mean the section next preceding or next following; unless some other section is expressly designated in such reference. "Preceding" and "following."

Fifteenth. When the seal of a court, public office, or corporation, is required by law to be affixed to any paper, the word "seal" shall include an impression of the official seal made upon the paper alone as well as an impression made by means of a wafer or of wax affixed thereto. "Seal." 1855, 223. 50 Maine, 549. 9 N. H. 569. 13 How. 478. 10 Allen, 261.

Sixteenth. The word "state," when applied to the different parts of the United States, shall extend to and include the district of Columbia and the several territories so called; and the words "United States" shall be construed to include said district and territories. "State" and "United States."

Seventeenth. The word "town" may be construed to include cities and districts, unless such construction would be repugnant to the provision of any statute specially relating to such cities or districts. "Town."

"Place,"  
11 Gray, 81.  
102 Mass. 215.  
"Will,"  
"Written" and  
"in writing,"  
9 Pick. 812.

"By-law" and  
"ordinance."

"Sworn," as ap-  
plied to public  
officers.  
Const. ch. 6,  
art. 1.  
Amend. const.  
art. 6.

Eighteenth. The word "place" may mean city and town unless some other meaning is implied by the context.

Nineteenth. The term "will" shall include codicils.

Twentieth. The words "written" and "in writing," may include printing, engraving, lithographing, and any other mode of representing words and letters; but when the written signature of a person is required by law, it shall always be the proper hand-writing of such person or, in case he is unable to write, his proper mark.

Twenty-first. The word "ordinance," as applied to cities, is synonymous with the word "by-law."

Twenty-second. The word "sworn" when applied to public officers who are required by the constitution to take the oaths therein prescribed, shall be construed as referring to those oaths; and when applied to other officers it shall be construed to mean sworn to the faithful discharge of the duties of their offices, before a justice of the peace, unless other provision is specially made.

## CHAPTER 4.

### OF PUBLIC REPORTS AND DOCUMENTS.

#### SECTION

1. Annual reports of public officers, &c., when made.
2. Certain reports to be laid before legislature in printed form, &c.
3. Special reports.
4. Number to be printed.
5. Distribution of reports.
5. Railroad reports to be furnished members

#### SECTION

- of the legislature and railroad corporations.
7. "Public series" to be furnished under certain acts, &c.
8. to be furnished to towns.
9. Penalty for neglect under this chapter.
10. Treasurer, auditor, &c., may require their reports to be put in type.

*Printing done.*  
1676 & 178

Annual reports  
of public officers,  
&c., when made.  
1867, 40, §§ 1, 8,  
4, 5, 8.  
1868, 46, §§ 1, 2.  
See 1868, 219, § 2.  
1864, 94.

Certain reports  
to be laid before  
legislature in  
printed form, &c.  
1867, 40, §§ 1, 2, 5.  
1868, 46, §§ 3, 8.

See 1870, 273, § 1.

Special reports.  
1867, 40, § 11.

SECTION 1. The annual reports of public officers, boards, and institutions, which are required by law or custom to be made to the governor and council, the legislature, the secretary of the commonwealth, or to the governor to be by him transmitted to the legislature, (except the address of the governor, the annual reports of the treasurer, auditor, attorney-general, adjutant-general, board of education, board of agriculture, board of insurance commissioners, railroad corporations, the annual statement of the expenses of the offices of the secretary, treasurer, auditor, and adjutant-general, and the returns relating to births, marriages, and deaths,) shall include the year ending on the thirtieth day of September, and shall be submitted to the secretary of the commonwealth on or before the fifteenth day of October annually; and all commissions shall make reports at the same time and in the same manner.

SECT. 2. The secretary shall cause such reports and the reports of the auditor of accounts, the boards of education and agriculture, and other reports which the senate and house by concurrent order direct, and the annual abstracts prepared in the secretary's office, to be laid before the legislature in a printed form on the first Wednesday of January annually; but he shall with the advice and consent of the governor and council omit all unnecessary and improper portions of such reports, so as to reduce the printed report to a reasonable length and proper form. Such documents shall be styled the "public" series of documents, and be numbered separately from the "senate" and "house" series.

SECT. 3. Public officers and boards and managers of public institutions shall in addition to their annual reports make special reports when the public interest requires.

SECT. 4. There shall be printed eight thousand copies of the report of the board of education, ten thousand copies of the report of the board of agriculture, and two thousand copies of each of the other documents of such public series. If the public interest requires a larger number of any document, the secretary may by special order direct additional copies to the number of one thousand; and he shall include in the annual statement of the expenses of his office a list of the documents thus ordered.

Number to be printed.  
1858, 48, §§ 4, 6.  
1858, 22.

See 1863, 219.  
1870, 273, § 2.

SECT. 5. Twelve hundred copies of the reports of the boards of education and agriculture shall be delivered to the secretary of the commonwealth, and the remainder distributed as said boards respectively shall direct; and not more than three hundred copies of a public document shall be placed by the secretary at the disposal of the officer, board, or institution, whose report it is.

Distribution of reports.  
1858, 46, §§ 4, 5, 6.  
See 1863, 219, § 2.

SECT. 6. The annual reports of railroad corporations shall be filed in separate complete sets, and a complete set, thus filed, shall be furnished to each member of the legislature within ten days after the beginning of the session; and one copy of each of said reports shall be furnished by the secretary of the commonwealth to every railroad corporation established in this state.

Railroad reports, to whom furnished.  
1858, 7.  
1858, 46, § 8.

SECT. 7. Documents to be furnished to any person, library, association, or corporation, under any act or resolve passed previous to the second day of May one thousand eight hundred and fifty-seven, shall include only the "public series." All other documents printed by order of either or both branches of the legislature shall be distributed as prescribed by their rules and orders.

"Public series" to be furnished under certain acts, &c.  
1858, 46, § 7.

SECT. 8. The secretary shall furnish annually a complete set of the public series in a bound volume to each city and town in the commonwealth, to be preserved in some public place therein, which volume shall have a title page bearing the date of the year, and a brief index to the titles of the several documents.

to be furnished to towns.  
1857, 40, § 9.  
1858, 46, § 10.  
See 1836, 195, § 2.

SECT. 9. Whoever wilfully neglects any duty required by this chapter shall forfeit ten dollars for each day such neglect continues.

Penalty for neglect.  
1858, 46, § 9  
Treasurer, auditor, &c., may require their reports to be put in type.  
1857, 40, § 4.

SECT. 10. The treasurer, auditor, attorney-general, adjutant-general, board of education, and board of agriculture, may require any portion of their reports to be put in type previous to the first Wednesday in January annually, when the same can be done consistently with the public advantage. The governor may also require his annual address so to be put in type.

## CHAPTER 5.

### OF THE STATE LIBRARY AND OTHER PUBLIC PROPERTY.

#### STATE LIBRARY.

##### SECTIONS

- 1 State Library to be in the state house — when to be open.
- 2 Three trustees to be appointed by governor and council
2. Duties of trustees.
4. Librarian and assistant.
5. Trustees and Librarian may employ assistance.
6. Books, &c., belonging to state to be placed in Library.
7. Annual appropriation for the library.
8. Librarian to make report to legislature, annually.
9. Committee to report necessary repairs, &c., upon state house.

5 \*

#### OTHER PUBLIC PROPERTY.

##### SECTIONS

- 10 Charge of certain property of the commonwealth.
11. Trustees, &c., of certain institutions to make inventories of stock, &c., annually.
12. Custody of magazines, &c. Entrenching tools, &c., to be marked.
13. Penalty for purchasing, &c., tools, &c., branded
14. for defacing, &c., buildings, &c., belonging to state.

#### CONVEYANCES OF PUBLIC LANDS.

15. Conveyances to be approved by governor and council.

## STATE LIBRARY.

State library to be in state house.  
R. S. 11, § 9.  
1849, 155, § 2.

Three trustees appointed by governor, &c.  
1850, 152, § 1.

Duties.  
R. S. 11, § 11.  
1850, 152, §§ 1, 2.  
1850, 315.  
See 1856, 195.  
1870, 150.

Librarian and assistant.  
1849, 155, § 1.  
1859, 64.

Trustees and librarian may employ assistance.  
Resolves,  
1857, 49, § 2.

Books, &c., belonging to state to be placed in library.  
R. S. 11, § 10.  
1849, 155, § 2.

Annual appropriation for library.  
R. S. 11, § 12.  
1850, 152, § 1.  
Resolves,  
1857, 49, § 1.  
1858, 2.

Librarian to report to legislature.  
1849, 155, § 3.  
See Ch. 4.

Committee on state house, &c.  
1857, 65, § 1.

Charge of state property.  
R. S. 11, §§ 1-3.  
1839, 72.  
1852, 275.  
1853, 318.  
1855, 442.  
1856, 247.  
Resolves,  
1838, 70.

SECTION 1. There shall be in the state house a state library for the use of the governor, lieutenant-governor, council, senate, house of representatives, and such officers of the government, and other persons, as may be permitted to use the same, to be kept open every day except Sundays and public holidays.

SECT. 2. The library shall be under the management and control of three trustees appointed by the governor by and with the advice and consent of the council, who shall hold their offices for three years unless sooner removed. The trustees now in office shall hold their offices according to the tenor of their commissions unless sooner removed.

SECT. 3. The trustees shall superintend the library, sell or otherwise dispose of such books belonging thereto as they deem unsuitable for its purposes, see that its apartments are properly prepared for the accommodation of persons permitted to use the same; and make and enforce such rules for its regulation as they think proper.

SECT. 4. The secretary of the board of education shall be librarian. He may appoint an assistant, who as assistant librarian and clerk of the board of education shall receive an annual salary of fifteen hundred dollars payable quarterly out of the treasury of the commonwealth.

SECT. 5. The trustees and librarian, at an expense not exceeding five hundred dollars, may employ such assistance as is necessary for the accommodation of visitors, for the protection and care of the library, and for the performance of any labor the librarian may require.

SECT. 6. All books, laws, maps, documents, and other publications belonging to the state and for public use, except such as by order of the respective departments of the government are now retained in the senate chamber, in the hall of the house of representatives, and in the department of the secretary of the commonwealth, shall be deposited and suitably arranged in the library, and shall be under the care of the librarian.

SECT. 7. Twenty-three hundred dollars shall be annually appropriated for the library, and expended under the direction of the trustees and librarian in purchasing or otherwise procuring such books, maps, charts, and works, as they deem most useful, in binding and keeping in good condition the works therein, and in purchasing furniture and other necessary conveniences therefor.

SECT. 8. The librarian shall annually report to the legislature the receipts and expenditures on account of the library, with a list of books, maps, and charts, lost, missing, or acquired, since the last report, specifying those obtained by exchange, donation, or purchase; and shall in his report make suggestions for the improvement of the library.

## OTHER PUBLIC PROPERTY.

[See 1836, 295; 1839, 432; 1872, 233.]

SECT. 9. There shall be annually appointed by the senate and house of representatives, a joint standing committee on the state house, consisting of two members of the senate and five of the house, who shall report to the legislature what repairs and improvements are necessary to be made in and upon the state house and the grounds connected therewith, together with an estimate of the expenses.

SECT. 10. The state house and lands appurtenant in Boston, the state arsenal at Cambridge, the state prison at Charlestown, the state lunatic hospitals at Worcester, Taunton, and Northampton, the hospital at Rainsford Island, the state reform school at Westborough, the industrial school for girls at Lancaster, the state almshouses at Monson, Tewksbury, and Bridgewater, the state normal schools at Framingham, Westfield, Bridgewater, and Salem, and other property of the common-

wealth, shall continue in charge of the persons designated by the several laws in relation thereto.

SECT. 11. The trustees or inspectors of each state lunatic hospital, state almshouse, the hospital at Rainsford Island, reform school for boys, and industrial school for girls, shall annually on the thirtieth day of September, cause to be made an accurate inventory of the stock and supplies on hand, and the value and amount thereof, at such institution, under the following heads:

Live stock on the farm; produce of the farm on hand; carriages and agricultural implements; machinery and mechanical fixtures; beds and bedding in the inmates' department; other furniture in the inmates' department; personal property of the state in the superintendent's department; ready-made clothing; dry goods; provisions and groceries; drugs and medicines; fuel; library.

SECT. 12. Public magazines, munitions of war, entrenching tools, and all other implements of war belonging to the commonwealth, shall, when not in actual use, be in the custody of the adjutant-general; he shall at the public expense also provide suitable places for their safe keeping, and shall have the care and management of all lands held by the commonwealth for military uses. Such tools and implements shall be designated as the property of the commonwealth by suitable permanent brands or marks on each of them.

SECT. 13. Whoever purchases, retains, or has in his possession, any tool or implement so marked or branded, and not delivered to him by a person thereto authorized, shall be punished by fine not exceeding ten times the value of such tool or implement.

SECT. 14. Whoever wilfully defaces, mars, or injures, the walls, wainscoting, or any other part, of the state house, or other building, or the appurtenances thereof, belonging to the commonwealth, by cutting, writing, or in any other manner, shall for each offence forfeit a sum not less than five dollars.

#### CONVEYANCES OF PUBLIC LANDS.

SECT. 15. All conveyances of land or flats of the commonwealth shall be subject to the approval of the governor and council.

1853, 49.  
1854, 52.

Trustees, &c., of  
certain institutions  
to make  
inventories, &c.  
1859, 177, § 2.  
See Ch. 71, §§ 29,  
54.  
Ch. 73, § 6.  
Ch. 75, § 25.  
Ch. 76, § 7.

Custody of  
magazines, &c.  
Tools, &c., to be  
marked.  
R. S. 11, §§ 6, 7.

Penalty for pur-  
chasing, &c.,  
tools, &c.,  
branded.  
R. S. 11, § 7.

for defacing,  
&c., buildings,  
&c., of the state.  
R. S. 11, § 8.  
See Ch. 14, § 53.

Conveyances,  
how approved.  
1859, 223.  
See 1896, 264.

1873 c. 291

Res. 1874 c. 5

## TITLE II.

### OF ELECTIONS.

CHAPTER 6. — Of the Qualifications of Electors.

CHAPTER 7. — Of the manner of conducting Elections and returning Votes.

CHAPTER 8. — Of the Election of Governor and other State Officers.

CHAPTER 9. — Of the Election of Representatives in Congress and Electors of President and Vice President.

CHAPTER 10. — Of the Election of District and County Officers.

## CHAPTER 6.

## OF THE QUALIFICATIONS OF ELECTORS.

## SECTION

1. Qualifications of voters at town, county, and other elections.
2. Collectors of taxes to keep a list of persons who have paid their taxes, and upon request to give receipts.
3. Collectors to return lists to selectmen twice a year.
4. Penalty for neglect, and for a false return.
5. Mayor and aldermen and selectmen to make and post up lists of voters.
6. To be in session for receiving evidence of qualifications, and to give notice thereof.

## SECTION

7. Sessions of mayor and aldermen and selectmen in places where voters exceed one thousand.
8. Provisions as to correcting lists of voters.
9. Naturalization papers to be produced for inspection.
10. Penalty for giving false answers.
11. Mayor and aldermen and selectmen, when not answerable for omissions.
12. Penalty for wilful neglect by city or town officers.

## Qualifications of voters.

Amend. const.  
art. 8, 20, 23.  
R. S. 3, § 1.  
11 Pick. 588.  
5 Met. 162, 238,  
561.  
7 Gray, 299.  
See 1861, 145.  
1866, 63.  
1868, 211, § 2.  
1868, 443.  
1872, 261.

## Collectors of taxes to keep list of persons who have paid taxes, and to give receipt.

R. S. 3, § 2.

## Collectors to return lists to selectmen twice a year.

Amend. const.  
art. 15.  
R. S. 3, § 3.  
City charters.  
4 Pick. 118.  
7 Pick. 236.

## Penalty for neglect and for false return.

R. S. 3, § 4.

## Mayor and aldermen and selectmen to make and post up lists of voters.

Amend. const.  
art. 15.  
R. S. 3, § 5.

See 1867, 206.  
10 Cush. 143.

## To be in session for receiving evidence of qualifications, and to give notice thereof.

R. S. 3, § 6.  
10 Cush. 143.

SECTION 1. Every male citizen of twenty-one years of age and upwards, (except paupers, persons under guardianship, and persons excluded by articles twenty and twenty-three of the amendments to the constitution,) who has resided within the state one year, and within the city or town in which he claims a right to vote six months next preceding any election of city, town, county, or state officers, or of representatives to congress, or electors of president and vice-president, and who has paid, by himself, his parent, master, or guardian, a state or county tax assessed upon him in this state within two years next preceding such election, and every citizen exempted from taxation but otherwise qualified, shall have a right to vote in all such elections; and no other person shall have such right to vote.

SECT. 2. The collectors of state and county taxes in each city and town shall keep an accurate account of the names of all persons from whom they receive payment of any state or county tax, and of the time of such payment; and upon request shall deliver to the person paying the same a receipt specifying his name and time of payment; and such receipts shall be admitted as presumptive evidence thereof.

SECT. 3. The collectors, whether the time for which they were chosen has expired or not, shall twice in each year, namely, once not more than twenty nor less than fifteen days before the annual city or town elections, and once not more than twenty nor less than fifteen days before the Tuesday next after the first Monday in November, return to the mayor and aldermen and selectmen of their respective cities and towns, an accurate list of all persons from whom they have received payment of any state or county tax subsequently to the time appointed for making their last preceding return.

SECT. 4. Every collector neglecting to make such return shall forfeit one hundred dollars for each neglect; and twenty dollars for every name in respect to which he makes a false return.

SECT. 5. The mayor and aldermen and selectmen of cities and towns shall, at least ten days before the annual city and town elections and at least ten days before the Tuesday next after the first Monday in November annually, make correct alphabetical lists of all the persons qualified to vote for the several officers to be elected at those periods, and shall at least ten days before said elections cause such lists to be posted up in two or more public places in their respective cities and towns.

SECT. 6. The mayor and aldermen and selectmen shall be in session at some convenient place for a reasonable time, within forty-eight hours next preceding all meetings for the elections of the officers aforesaid, for the purpose of receiving evidence of the qualifications of persons claiming a right to vote in such elections, and of correcting the lists of voters. Such session shall be holden for one hour at least before the

S. 1874-376. §§. 13-5.  
7, 8, 13-18, 58

1874 c. 20

opening of the meeting on the day of the election, and notice of the time and place of holding the sessions shall be given by the mayor and aldermen and selectmen upon the lists posted up as aforesaid.

SECT. 7. In every place where the number of qualified voters exceeds one thousand, a like session of the mayor and aldermen or selectmen shall be holden on the day immediately preceding the meeting, and for as much longer time previous to said day as they judge necessary for the purpose aforesaid. When the day immediately preceding such meeting is Sunday, such session shall be holden on the Saturday preceding.

SECT. 8. The selectmen shall also enter on such lists the name of any person known to them to be qualified to vote, and shall erase therefrom the name of any person known to them not to be qualified.

SECT. 9. The mayor and aldermen and selectmen before entering upon the lists the name of a naturalized citizen, shall require him to produce for their inspection his papers of naturalization and be satisfied that he has been legally naturalized; but they need not require the production of such papers after they have once examined and passed upon them.

SECT. 10. Whoever gives a false name or a false answer to the mayor and aldermen or selectmen when in session for the purposes aforesaid, shall forfeit the sum of thirty dollars for each offence.

SECT. 11. The mayor and aldermen and selectmen, if they have duly entered on said lists the names of all persons returned to them by the collectors, shall not be answerable for any omissions therefrom.

SECT. 12. A city or town officer who wilfully neglects or refuses to perform any duty required of him by the provisions of this chapter, shall for each offence forfeit a sum not exceeding two hundred dollars.

Sessions in places where voters exceed one thousand.

R. S. 3, § 7.  
7 Allen, 155.

1874 c. 20

Correcting lists of voters.

1839, 42, § 4.  
1839, 185, § 2.

Naturalization papers to be produced, &c.

Amend. const., art. 23.  
1855, 416.

Penalty for giving false answers.

R. S. 3, § 8.  
7 Allen, 155.

Selectmen, &c., when not answerable.

R. S. 3, § 9.  
8 Allen, 1.

Penalty for neglect, &c., by town officers.

R. S. 4, § 11.  
1839, 42, § 6.

7 Greenl. 411.  
1 East. 563.

11 Johns. 114.  
1 N. H. 88.

11 S. & R. 26.  
11 Mass. 350.

## CHAPTER 7.

### OF THE MANNER OF CONDUCTING ELECTIONS AND RETURNING VOTES.

#### SECTIONS

1. Elections not to be held on days designated by law for military duty.
2. Meetings, when to be opened. Selectmen, &c., to decide whether officers shall be voted for on one or on separate ballots.
3. Meetings, how called, time to be kept open.
4. Secretary of commonwealth to provide envelopes.
5. City and town clerks to procure envelopes from secretary.
6. Selectmen and ward officers' to provide envelopes at polls on the day of election.
7. Persons fraudulently obtaining envelopes liable to a fine.
8. Selectmen to preside at elections.
9. Presiding officers at elections to have a list of voters and check names.
10. Selectmen when not answerable for refusing to receive votes.
11. Moderator shall receive votes of all persons on lists, and may refuse all others.
12. Manner of depositing votes, &c.
13. Votes when to be rejected, &c.
14. Results of elections, how determined. No choice in certain cases.
15. Selectmen and ward officers to count votes.
16. Mayor and aldermen and clerk to examine returns, and if faulty require new returns. Other regulations.
17. City and town clerks to make returns of votes to secretary, &c.

#### SECTIONS

18. Returns by mail.
19. When return is unsealed, secretary to give notice to returning officers, who shall transmit a sealed copy.
20. Secretary to furnish blanks, &c., to cities and towns.
21. to record date of receiving returns, &c.
22. Votes for governor, &c., by whom examined.
23. Governor to certify examination of returns for governor, &c.
24. Envelopes and returns to be preserved, and with certificate, &c., laid before legislature.
25. Votes for county commissioners, by whom examined. Penalty for neglect.
26. Board to file copies in clerk's office. Penalty for neglect.
27. Votes for county treasurer and register of deeds, by whom examined.
28. Penalty for voting if not qualified.
29. for giving more than one ballot.
30. for giving false answers
31. for attempting to influence voters by bribery or threats.
32. for aiding unqualified persons to vote.
33. for disorderly conduct at elections
34. on town or city officers for neglect of duty.
35. on clerks neglecting to return votes.
36. Elections in cities.

*Supervisors*

1873 C. 376

*Check-list.*

1874, 344-

*Penalties*

1874, 356

CONDUCTING ELECTIONS AND RETURNING VOTES. [CHAP. 7.]

SECTION 1. No meeting for the election of national, state, district, county, city, or town officers shall be held on a day upon which the militia of the commonwealth are by law required to do military duty.

SECT. 2. Meetings for the election of national, state, district, and county officers may be opened as early as nine o'clock in the forenoon, and shall be opened as early as two o'clock in the afternoon of the election day; and the mayor and aldermen and selectmen shall decide whether such officers shall be voted for on one ballot or at the same time on separate ballots, and shall give notice thereof in the warrant calling the meeting.

SECT. 3. Such meetings in towns shall be called by the selectmen in the manner ordered by the towns, and in cities according to the provisions of the acts establishing them and the acts in addition thereto; and the warrant for notifying such meetings shall specify the time when the polls for the choice of the several officers shall be opened, and the same shall be kept open at least two hours, and in towns for such longer time as a majority of the voters present shall by vote direct; but in no case shall the polls be kept open after the hour of sunset.

SECT. 4. The secretary of the commonwealth shall provide and keep constantly in his office a sufficient number of self-sealing envelopes to supply all the voters in the commonwealth, and shall furnish the same to the clerks of the several cities and towns when applied for. Such envelopes shall be of uniform size and color and bear the arms of the commonwealth, and no other envelopes shall be used at the polls.

SECT. 5. The city and town clerks shall obtain from the secretary such number of envelopes as may be sufficient to meet the wants of the voters of their respective cities and towns, and keep the same subject to the order of the selectmen of towns, or the wardens and inspectors of cities.

SECT. 6. The ward officers in each city and the selectmen of each town shall obtain from the city or town clerks and provide at the polls on the day of election a sufficient number of such envelopes, and supply each person claiming to be a voter in said city or town, on his personal application, with such number as the pending election may require, and return to the clerk all envelopes not used.

SECT. 7. Whoever wilfully claims to be a voter, knowing that he is not a voter where the claim is made, and by reason thereof fraudulently obtains an envelope from the persons having the custody of the same on the day of the election, shall be liable to a fine of not less than ten nor more than fifty dollars.

SECT. 8. At town meetings for the election of national, state, district, and county officers, the selectmen shall preside; and shall have all the powers which are vested in moderators.

1867, 171, 211. See 1862, 180. 1863, 180, 196. 1871, 124, § 4. 2 Allen, 1. 103 Mass. 542.

SECT. 9. The presiding officers at meetings held for the election of town or other officers, shall be provided with a complete list of the persons qualified to vote at such election; and no person shall vote at an election whose name has not been previously placed on such list, nor until the presiding officers find and check his name thereon.

SECT. 10. The selectmen shall not be answerable for refusing the vote of any person whose name is not on the list of voters, unless such person before offering his vote furnishes them with sufficient evidence of his having the legal qualifications of a voter at such meeting, and requests them to insert his name on said list.

SECT. 11. The moderator of a town meeting shall receive the votes of all persons whose names are borne on the list of voters as certified by the selectmen; and shall not be answerable for refusing the vote of a person whose name is not on said list.

SECT. 12. No vote shall be received by the presiding officers at any election provided for in this chapter, unless presented for deposit in the



ballot box by the voter in person in a sealed envelope, or open and unfolded, and so that such officers can know but one ballot is presented.

SECT. 13. Votes for different persons for the same office found in one envelope shall not be counted, and if more than one vote for the same person for the same office is found in one envelope, but one such vote shall be counted, and no vote shall be counted which does not clearly indicate in writing the office for which the person voted for is designed, except when but one officer is voted for.

SECT. 14. In all elections of civil officers by the people, the person or persons having the highest number of votes shall be deemed and declared to be elected; but no persons receiving the same number of votes shall be deemed to be elected, if thereby a greater number would be elected than required by law.

SECT. 15. The votes in elections for national, state, county, and district officers, shall be received, sorted, and counted, by the selectmen, and by the ward officers, and public declaration made thereof in open town and ward meetings. The names of persons voted for, the number of votes received for each person, and the title of the office for which he is proposed, shall be entered in words at length by the town and ward clerks in their records. The ward clerks shall forthwith deliver to the city clerks certified copies of such records, who shall forthwith enter the same in the city records.

SECT. 16. The mayor and aldermen and the clerk of each city shall forthwith after an election examine the returns made by the returning officers of each ward in such city, and if any error appears therein they shall forthwith notify said ward officers thereof, who shall forthwith make a new and additional return, under oath, in conformity to truth, which additional return, whether made upon notice or by such officers without notice, shall be received by the mayor and aldermen or city clerk at any time before the expiration of the day preceding that on which by law they are required to make their returns or to declare the results of the election in said city; and all original and additional returns so made shall be examined by the mayor and aldermen and made part of their returns of the results of such election. In counting the votes in an election no returns shall be rejected when the votes given for each candidate can be ascertained.

SECT. 17. City and town clerks shall within ten days from the day of an election for governor, lieutenant-governor, councillors, senators, secretary, treasurer and receiver-general, auditor, attorney-general, representatives in congress, commissioners of insolvency, sheriffs, registers of probate and insolvency, district-attorneys, or clerks of the courts, transmit copies of the records of the votes, attested by them, certified by the mayor and aldermen or selectmen, and sealed up, to the secretary of the commonwealth; they shall in like manner within ten days after an election for county treasurer or register of deeds, transmit such copies of the records of the votes to the county commissioners of their several counties; and within seven days after an election for county commissioners, transmit such copies of the records of the votes to the clerks of the courts for their several counties; but in Suffolk the return of votes for register of deeds shall be made to the board of aldermen of Boston, and in Chelsea, North Chelsea, and Winthrop, the returns of votes for county commissioners shall be made to the clerk of the courts for the county of Middlesex. Or within three days after such elections, such clerks may deliver such copies, sealed up, to the sheriffs of their several counties, who within seven days after receiving them shall transmit them to the office of the secretary, and to the county commissioners, board of aldermen, and clerks of courts, as severally above designated.

SECT. 18. Proof that a return of votes was properly directed to the person to whom it was required to be transmitted or delivered, and

R. S. 4, § 4.  
1839, 42, § 5.  
1851, 226, § 6.  
1852, 36, § 1.  
23 Pick. 308.  
See 1871, 124, § 4.  
Votes when to be rejected, &c.  
1852, 38, § 1.  
1854, 59, § 1.  
See 1871, 124, § 4.  
Results of elections, how determined.  
Amend. const. art. 14.  
1856, 157, §§ 1, 2.  
1867, 185.  
Selectmen and ward officers to count votes.  
1857, 171, §§ 1, 2.  
1857, 811.  
See Ch. 9, § 4, 12.  
See 1868, 144.  
1867, 240.  
1871, 40.  
1872, 270.  
Mayor and aldermen and clerk to examine returns and, if faulty, require new returns.  
Other regulations.  
1852, 309, § 1.  
See Ch. 9, § 12.  
See 1868, 144.  
1867, 240.  
1871, 40.  
City and town clerks to make returns of votes to secretary, &c.  
R. S. 14, §§ 17, 44, 101, 107.  
1850, 239, § 2.  
1852, 53.  
1856, 92, § 2.  
1856, 118.  
1857, 171, §§ 1, 2.  
1857, 811.  
1858, 98, §§ 4, 12.  
See Ch. 9, § 12.  
18 Gray, 88.

Returns by mail.  
1856, 256, § 2.

mailed within forty-eight hours after closing the polls, shall be a bar to any complaint for delinquency.

SECT. 19. When a return of votes from a city or town is received at the office of the secretary of the commonwealth not sealed up as by law required, he shall forthwith give notice thereof to the returning officers; who upon the receipt of such notice shall make a copy of their record of the votes at said election and transmit the same, certified by them under oath to be correct, to the secretary, sealed up as required by law in the case of original returns. If such copy is received by the secretary before the day on which by law the returns are to be opened and the votes counted, and if upon opening said copy by the governor and council, the legislature, or any person authorized so to do, the original return is found in substantial conformity therewith, it shall not be rejected because of informality.

SECT. 20. The secretary shall annually furnish to the several clerks of the cities and towns blank forms and envelopes for all returns of votes required to be made to his office, with such printed directions on the envelopes as he deems necessary for the guidance and direction of such officers in making the returns according to law.

SECT. 21. A memorandum of the date of the reception of all returns of votes at the secretary's office shall be made at said office on the envelopes containing them; and if a return required to be sealed up is received unsealed, the secretary shall make a memorandum of such fact upon said return.

SECT. 22. The secretary upon receiving such returned copies shall transmit them as received with their seals unbroken to the governor and council; and the governor with five at least of the council shall as soon as may be, examine them; and he shall issue his summons to such persons as appear to be chosen to the offices of governor, lieutenant-governor, councillors, secretary, treasurer and receiver-general, auditor, attorney-general, and senators; and to such persons as appear to be chosen members of congress, commissioners of insolvency, sheriffs, registers of probate and insolvency, district-attorneys, and clerks of the courts, he shall forthwith transmit a certificate of such choice signed by the governor and countersigned by the secretary.

SECT. 23. The governor shall in the presence of at least five councillors make and subscribe a certificate of the examination of the returns of votes for governor, lieutenant-governor, and councillors, required by article sixteen of the amendments of the constitution, and of the result of said examination.

SECT. 24. After such examination, the returns shall be replaced in their respective envelopes, which with the returns and such certificate the governor shall deliver to the secretary, and the secretary on the first Wednesday of January shall lay the same, together with schedules showing the number of ballots which appear to have been cast for each person voted for, before the senate and house of representatives.

SECT. 25. On the first Wednesday of the month succeeding an election for county commissioner, the board of examiners for the county for which the election was held shall meet; and the clerk of the courts shall present the returned copies of votes at such election; and the board shall open and examine them and notify the person chosen of his election. If such board or clerk wilfully neglects to perform any duty required of them under this section, each of them so neglecting shall forfeit a sum not exceeding two hundred dollars.

SECT. 26. The board shall within three days after such examination file such copies in the office of the clerk; and any one of them wilfully detaining in his custody such a copy three days after the time for filing it has expired shall forfeit fifty dollars and the same sum for each succeeding day of such detention; and the clerk shall notify the attorney-general of every neglect so to file, and every such detention.

When return is unsealed, secretary to give notice to returning officers, who shall transmit a sealed copy.  
1852, 206, § 2.

Secretary to furnish blanks, &c., to cities and towns.  
1857, 296, § 1.  
Resolves, 1807, 1.

to record date of receiving returns, &c.  
1857, 296, § 2.

Votes for governor, &c., by whom examined.  
Constitution, 1, § 2, art. 3.  
Amend. const. art. 16, 17, 19.  
R. S. 6, § 1.  
R. S. 8, § 5.  
1856, 173, §§ 4, 10.

how certified.  
Amend. const. art. 16.  
1857, 296, § 3.

Envelopes, &c., to be preserved and laid before legislature, &c.  
Amend. const. art. 16.  
1857, 296, § 4.  
1859, 27.

Votes for county commissioners, by whom examined. Penalty for neglect.  
R. S. 14, §§ 17, 18, 28.  
1856, 3.  
13 Gray, 83.

Board to file copies in clerk's office. Penalty for neglect.  
1851, 16.

SECT. 27. County commissioners shall, on the first Wednesday of January after an election for county treasurer or register of deeds in their county, open and examine the returned copies of votes at such election, and notify the person chosen of his election; but in Suffolk the board of aldermen of Boston, within ten days after an election for register of deeds for said county, shall so open and examine the votes of such election, and notify the person chosen.

Votes for county treasurer and register of deeds, how examined.  
R. S. 14, §§ 44, 101.

R. S. Act of Amend. § 3.  
1855, 92, § 3.  
1856, 118, § 4.  
2 Gray, 370.

Penalty for voting, if not qualified.

R. S. 4, § 6.  
9 Met. 283.

for giving more than one ballot.  
R. S. 4, § 7.

R. 1874, 356  
for giving false answers.

R. S. 4, § 8.  
7 Met. 52.

for attempting to influence voters by bribes or threats.  
1852, 321.

for aiding unqualified persons to vote.  
R. S. 4, § 9.

for disorderly conduct.  
R. S. 4, § 10.  
16 Mass. 385.

on town officers for neglect of duty.  
See Ch. 6, § 12.

on clerks.  
1856, 255, § 1.

Elections in cities.  
R. S. 4, § 12.

SECT. 28. Whoever knowing that he is not a qualified voter at an election wilfully votes for any officers to be then chosen, shall forfeit a sum not exceeding one hundred dollars for each offence.

SECT. 29. If a voter knowingly gives more than one ballot at one time of balloting at an election, he shall forfeit a sum not exceeding one hundred dollars.

SECT. 30. Whoever wilfully gives a false answer to the selectmen or moderator presiding at an election, shall forfeit for each offence a sum not exceeding one hundred dollars.

SECT. 31. Whoever by bribery, or threatening to discharge from his employment, or to reduce the wages of, or by a promise to give employment or higher wages to, a person, attempts to influence a qualified voter to give or withhold his vote in an election, shall be punished by fine not exceeding three hundred dollars or by imprisonment in the county jail or house of correction for a term not exceeding one year, or both, at the discretion of court.

SECT. 32. Whoever wilfully aids or abets any one, not legally qualified, in voting or attempting to vote at an election, shall forfeit a sum not exceeding fifty dollars for every such offence.

SECT. 33. Whoever is disorderly in a meeting held for an election mentioned in this chapter, shall forfeit a sum not exceeding twenty dollars.

SECT. 34. If a city or town officer wilfully neglects or refuses to perform the duties required of him respecting elections by the provisions of this chapter, he shall for each offence forfeit a sum not exceeding two hundred dollars.

SECT. 35. The clerk of any city or town who fails to make return of the votes given therein in conformity with the provisions of law, shall be liable to a fine of not less than five and not more than fifty dollars.

SECT. 36. Elections in cities shall be conducted according to the provisions of the acts establishing them and of the several acts in addition thereto, so far as they are not inconsistent with the provisions of this chapter.

## CHAPTER 8.

### OF THE ELECTION OF GOVERNOR AND OTHER STATE OFFICERS.

#### GOVERNOR, &c.

1. Election of governor and other state officers.

#### COUNCILLORS.

2. Division of commonwealth into councillor districts.

3. Districts, how constituted.

#### SENATORS.

4. Division of commonwealth into senatorial districts.

5. Districts, how constituted.

6. Apportionment of representatives.

#### REPRESENTATIVES IN THE GENERAL COURT.

##### SECTION

7. Warrants for meeting to state number of representatives to be voted for.

8. In a town constituting a district, repeated ballotings may be had on same day.

9. Proceedings in case of failure to elect in district contained in one town or city.

10. Selectmen and town clerks, &c., in composite districts to prepare, &c., transcript of record of votes.

11. Officers apportioning representation to designate place for clerks to meet and ascertain result of election.

## SECTION.

12. Clerks of towns, &c., in composite districts to meet and ascertain result of election.
13. Clerks to return and record votes of district.
14. Proceedings in case of failure to elect in composite districts.
15. Certificates of election in single districts.
16. in composite districts.
17. Form and return of certificate of election.

## SECTION.

18. Proceedings in case of vacancy.
19. Secretary to furnish blanks.
20. Penalty on officers refusing to perform duties.
21. on selectmen, giving false certificate.
22. on clerks for signing false certificate.
23. Compensation of city and town officers.
24. Appointment of clerk, *pro tempore*.

## GOVERNOR, &amp;c.

**SECTION 1.** The governor, lieutenant-governor, councillors, secretary, treasurer and receiver-general, auditor, attorney-general, and senators and representatives in the general court, shall be elected annually on the Tuesday next after the first Monday of November, as prescribed in the constitution.

## COUNCILLORS.

[Superseded by 1866, 221.]

**SECT. 2. (S.)** [For the choice of councillors the commonwealth is divided into eight districts, as provided in the following section, each of which shall in the manner prescribed by the constitution and laws elect one councillor.]

**SECT. 3. (S.)** [The five senatorial districts in the county of Suffolk constitute District Number One.

The five senatorial districts in the county of Essex constitute District Number Two.

The first, second, fourth, fifth, and sixth senatorial districts in the county of Middlesex, constitute District Number Three.

The Franklin senatorial district, the Hampshire and Franklin district, and the central, north-east, and north-west districts in the county of Worcester, constitute District Number Four.

The two senatorial districts in the county of Hampden, the two senatorial districts in the county of Berkshire, and the Hampshire district, constitute District Number Five.

The north Norfolk senatorial district, the third Middlesex district, and the east, south-east, and south-west districts in the county of Worcester, constitute District Number Six.

The west and east Norfolk senatorial districts and the three senatorial districts in the county of Bristol, constitute District Number Seven.

The three senatorial districts in the county of Plymouth, the Cape district, and the Island district, constitute District Number Eight.]

## SENATORS.

[Superseded, by 1866, 120.]

**SECT. 4. (S.)** [For the choice of senators the commonwealth is divided into forty districts, as provided in the following section, each of which shall in the manner prescribed by the constitution and laws elect one senator.]

**SECT. 5. (S.)** [The city of Chelsea, the towns of North Chelsea and Winthrop, and the ward numbered two in the city of Boston, constitute the First Suffolk District.

The wards numbered one, three, and five, in the city of Boston, constitute the Second Suffolk District.

The wards numbered four, six, and seven, in the city of Boston, constitute the Third Suffolk District.

The wards numbered eight, nine, and ten, in the city of Boston, constitute the Fourth Suffolk District.

The wards numbered eleven and twelve in the city of Boston, constitute the Fifth Suffolk District.

No new divisions of wards shall be made in the city of Boston, previous to the next apportionment of senators and representatives.

The city of Lynn, and the towns of Lynnfield, Marblehead, Nahant, Saugus, and Swampscott, constitute the First Essex District.

The city of Salem, and the towns of Danvers, Hamilton, Middleton, South Danvers, Topsfield, and Wenham, constitute the Second Essex District.

The city of Lawrence, and the towns of Andover, Boxford, Haverhill, Methuen, and North Andover, constitute the Third Essex District.

The city of Newburyport, and the towns of Amesbury, Bradford, Georgetown, Groveland, Newbury, Salisbury, and West Newbury, constitute the Fourth Essex District.

The towns of Beverly, Essex, Gloucester, Ipswich, Manchester, Rockport, and Rowley, constitute the Fifth Essex District.

The city of Charlestown, and the towns of Somerville, Melrose, and Malden, constitute the First Middlesex District.

The city of Cambridge, and the towns of Waltham, West Cambridge, Watertown, Belmont, and Brighton, constitute the Second Middlesex District.

The towns of Ashland, Framingham, Holliston, Hopkinton, Natick, Newton, Sherborn, Sudbury, Wayland, and Weston, constitute the Third Middlesex District.

The towns of Acton, Ashby, Boxborough, Carlisle, Chelmsford, Concord, Dunstable, Groton, Lincoln, Littleton, Marlborough, Pepperell, Shirley, Stow, Townsend, Tyngsborough, and Westford, constitute the Fourth Middlesex District.

The towns of Bedford, Billerica, Burlington, Lexington, Medford, North Reading, Reading, South Reading, Stoneham, Wilmington, Winchester, and Woburn, constitute the Fifth Middlesex District.

The city of Lowell, and the towns of Dracut, and Tewksbury, constitute the Sixth Middlesex District.

The city of Worcester, and the towns of Holden, Paxton, and Rutland, constitute the Central Worcester District.

The towns of Blackstone, Douglas, Mendon, Milford, Northbridge, Sutton, and Uxbridge, constitute the South-east Worcester District.

The towns of Auburn, Brookfield, Charlton, Dudley, Leicester, Oxford, Southbridge, Spencer, Sturbridge, Warren, Webster, and West Brookfield, constitute the South-west Worcester District.

The towns of Athol, Barre, Dana, Hardwick, Hubbardston, New Braintree, North Brookfield, Oakham, Petersham, Phillipston, Royalston, Templeton, and Winchendon, constitute the North-west Worcester District.

The towns of Ashburnham, Fitchburg, Gardner, Harvard, Lancaster, Leominster, Lunenburg, Princeton, Sterling, and Westminster, constitute the North-east Worcester District.

The towns of Berlin, Bolton, Boylston, Clinton, Grafton, Millbury, Northborough, Shrewsbury, Southborough, Upton, Westborough, and West Boylston, constitute the East Worcester District.

The towns of Agawam, Blandford, Chester, Chicopee, Granville, Holyoke, Ludlow, Montgomery, Russell, Southwick, Tolland, West-Springfield, and Westfield, constitute the West Hampden District.

The city of Springfield, and the towns of Brimfield, Holland, Longmeadow, Monson, Palmer, Wales, and Wilbraham, constitute the East Hampden District.

The towns of Chesterfield, Cummington, Easthampton, Goshen, Hadley, Hatfield, Huntington, Middlefield, Northampton, Plainfield, South Hadley, Southampton, Westhampton, Williamsburg, and Worthington, constitute the Hampshire District.

The towns of Ashfield, Bernardston, Buckland, Charlemont, Colrain, Franklin.

Wards in Boston, no new division until, &c.

First Essex.

Second Essex.

Third Essex.

Fourth Essex.

Fifth Essex.

First Middlesex.

Second Middlesex. 1859, 109.

Third Middlesex.

Fourth Middlesex.

Fifth Middlesex.

Sixth Middlesex.

Central Worcester.

South-east Worcester.

South-west Worcester.

North-west Worcester.

North-east Worcester.

East Worcester.

West Hampden.

East Hampden.

Hampshire.

Conway, Deerfield, Gill, Greenfield, Hawley, Heath, Leyden, Monroe, Northfield, Rowe, Shelburne, and Whately, constitute the Franklin District.

Hampshire and Franklin.

The towns of Amherst, Belchertown, Enfield, Granby, Greenwich, Pelham, Prescott, Ware, Erving, Leverett, Montague, New Salem, Orange, Shutesbury, Sunderland, Warwick, and Wendell, constitute the Hampshire and Franklin District.

North Berkshire.

The towns of Adams, Cheshire, Clarksburg, Dalton, Florida, Hancock, Hinsdale, New Ashford, Lanesborough, Peru, Pittsfield, Savoy, Williamstown, and Windsor, constitute the North Berkshire District.

South Berkshire.

The towns of Alford, Becket, Egremont, Great Barrington, Lee, Lenox, Monterey, Mount Washington, New Marlborough, Otis, Richmond, Sandisfield, Sheffield, Stockbridge, Tyringham, Washington, and West Stockbridge, constitute the South Berkshire District.

North Norfolk.

The city of Roxbury, and the towns of Brookline, Dorchester, and West Roxbury, constitute the North Norfolk District.

East Norfolk.

The towns of Braintree, Milton, Quincy, Randolph, Stoughton, and Weymouth, constitute the East Norfolk District.

West Norfolk.

The towns of Bellingham, Canton, Dedham, Dover, Foxborough, Franklin, Medfield, Medway, Needham, Sharon, Walpole, and Wrentham, constitute the West Norfolk District.

North Bristol.

The towns of Attleborough, Easton, Raynham, Mansfield, Norton, and Taunton, constitute the North Bristol District.

South Bristol.

The city of New Bedford, and the town of Dartmouth, constitute the South Bristol District.

West Bristol.

The towns of Berkley, Dighton, Fall River, Freetown, Pawtucket, Rehoboth, Seekonk, Somerset, Swansey, and Westport, constitute the West Bristol District.

North Plymouth.

The towns of Abington, Cohasset, Hanover, Hingham, Hull, North Bridgewater, Scituate, and South Scituate, constitute the North Plymouth District.

South Plymouth.  
1867, 202.

The towns of Bridgewater, Carver, Fairhaven, Lakefield, Mattapoisett, Marion, Middleborough, Rochester, and Wareham, constitute the South Plymouth District.

Middle Plymouth.

The towns of Duxbury, East Bridgewater, Halifax, Hanson, Kingstons, Marshfield, Pembroke, Plymouth, Plympton, and West Bridgewater, constitute the Middle Plymouth District.

Cape District.

The towns of Brewster, Chatham, Dennis, Eastham, Harwich, Orleans, Provincetown, Truro, Wellfleet, and Yarmouth, constitute the Cape District.

Island District.

The towns of Barnstable, Falmouth, and Sandwich, with the counties of Dukes County and Nantucket, constitute the Island District.]

#### REPRESENTATIVES IN THE GENERAL COURT.

Apportionment  
of representa-  
tives.

Amend. const.  
art. 21

1857, 808.

(S.) Superseded  
by 1866, 103

Warrants for  
meeting to state  
number of repre-  
sentatives to be  
voted for.  
1867, 311, § 2.

In certain  
towns repeated

SECT. 6. (S.) [The two hundred and forty representatives are apportioned to the several counties, as follows:—

Barnstable, nine; Berkshire, eleven; Bristol, twenty; Dukes county, one; Essex, thirty-two; Franklin, eight; Hampden, twelve; Hampshire, eight; Middlesex, thirty-nine; Nantucket, two; Norfolk, (excluding the town of Cohasset,) twenty; Plymouth, and the town of Cohasset, sixteen; Suffolk, twenty-eight; Worcester, thirty-four.]

SECT. 7. Warrants for meetings for the election of representatives shall direct that the voters in towns, cities, and wards, be notified to bring in their votes on one ballot for the representatives to which their several districts are entitled, and shall specify the number thereof. And such elections shall be conducted and the results thereof determined as provided in chapter seven except as hereinafter provided.

SECT. 8. When a town constituting a district fails on the first ballot

The next  
of this  
C. H. H. H.  
1874, 376  
§ 58 &  
see § 24,

to make choice of the representatives to which it is entitled, other balloting may be had on the same day, but the polls for such balloting shall not be opened after five o'clock in the afternoon.

SECT. 9. When a town, city, or the wards of a city, constituting a representative district, at the election held on the Tuesday next after the first Monday of November fail to elect the number of representatives to which such district is entitled, the proper officers of such city or town shall issue their warrant for a new election in such district, to be held on the fourth Monday of said November, to fill the vacancy, and the number to be elected shall be specified in the warrant, and similar proceedings shall be had thereupon as in the original election of such representatives.

SECT. 10. In towns, cities, and wards, composing a part of a representative district, the selectmen and town clerks and ward officers, in open town and ward meetings, and the mayor and aldermen and city clerks, shall forthwith upon the vote for representative being recorded make out under their hands and seal up and deliver to their respective clerks a true transcript of such record.

SECT. 11. The county commissioners, mayor and aldermen, or board of aldermen, or such special commissioners as are authorized to apportion the representation assigned to the several counties, at their meeting for such purpose, shall designate a place in each representative district, not contained in or consisting of one town or city, at which the clerks of towns, cities, and wards, composing such district, shall assemble for the purpose of ascertaining the result of elections. Due notice of such appointment shall be given by said commissioners or mayor and aldermen to every town, city, and ward, in the district. Such place of meeting may be changed once in two years by the same authority, after a hearing on the petition of two of such clerks.

SECT. 12. The clerks of cities, towns, and wards, composing such districts, shall meet at noon on the day following an election for representatives, at the place so designated, and shall examine and compare such transcripts and ascertain what persons have been elected. If any error appears in a transcript or return, the clerks shall forthwith give notice thereof to the officers required to make the return, and such officers shall forthwith in conformity with the truth and under oath, make a new return, which, whether made with or without such notice, shall be received and examined by said clerks within two days after the time appointed for the meeting; and for that purpose the meeting may be adjourned not exceeding two days. No return shall be rejected when the number of votes given for each candidate can be ascertained.

SECT. 13. Such clerks shall at such meeting make out under their hands a complete return of all the votes cast for representatives in the district, the names of all persons for whom such votes were given, and the number of votes for each person, and a record of the return shall be made in the book of records of their respective cities, towns, and wards, within four days after the day of the meeting.

SECT. 14. If upon such examination and comparison of transcripts it appears to such clerks that their district has failed to elect the number of representatives to which it is entitled, such fact shall be certified by such ward and city clerks to the mayor and aldermen of their city, and by such town clerks to the selectmen of their several towns, and such mayor and aldermen and selectmen shall forthwith issue their warrants for another meeting for the election of representatives, to fill such vacancy, to be held on the fourth Monday of the same November, and similar proceedings shall be had thereupon as at the first election.

SECT. 15. When it is ascertained who is elected representative in a district, composed of one town, or city, or one or more wards of a city, the selectmen or mayor and aldermen shall make out duplicate certi-

ballotings may be had on same day, &c.

1844, 78.  
1867, 811, § 1.  
Proceedings in case of failure to elect in district contained in one town or city.  
1867, 811, § 1.

Selectmen, &c., in composite districts to prepare, &c., transcript of record of votes.  
1867, 811, § 5.

Officers apportioning representation to designate place for clerks to meet and ascertain result of election.  
1867, 811, § 8.

Clerks of towns, &c., in composite districts to meet and ascertain result of election.  
1867, 811, §§ 8, 5, 7.  
1869, 121, §§ 1, 2

to return and record votes of the district.  
1867, 811, § 8.

Proceedings in case of failure to elect in composite district.  
1867, 811, § 7.

Certificates of election in single districts.  
R. 8. 5, § 8.

1844, 148, §§ 2, 3.  
1857, 811, § 1.  
See § 19.

in composite  
districts.  
1857, 811, § 5.  
See § 19.

Form and return  
of certificate of  
election.  
1857, 811, § 3.

Proceedings in  
case of vacancy.  
1858, 6, § 1.

Secretary to fur-  
nish blanks.  
1844, 148, §§ 1, 2,  
12.  
1857, 811, § 10.  
1859, 121, § 4.

Penalty on offi-  
cers refusing to  
perform duties.  
1857, 811, § 9.

on selectmen  
giving false cer-  
tificates.  
1852, 282.

on clerks for  
signing false  
certificate.  
1859, 121, § 8.

Compensation of  
city and town  
officers.  
1857, 811, § 5.

Appointment of  
clerk *pro tem-  
pore*.  
1857, 811, § 11.

cates thereof, one of which they shall transmit to the office of the secretary of the commonwealth on or before the first Wednesday in January following, and the other by a constable or other authorized officer to the person elected, within ten days after the day of election.

SECT. 16. When the clerks of cities, towns, and wards, composing a district, at their meeting for the purpose, ascertain that a representative is elected in their district, they or a majority of them shall make out duplicate certificates thereof, one of which they shall deliver into the office of the secretary of the commonwealth, on or before the first day of January following, and the other by a constable or other authorized officer transmit to the person elected, within ten days after the day of election.

SECT. 17. Such certificates of election shall be in substance as follows:—

Commonwealth of Massachusetts, county of \_\_\_\_\_ Pursuant to a law of this commonwealth, the qualified voters of Representative District Number \_\_\_\_\_, in their several meetings on the \_\_\_\_\_ day of November instant, for the choice of representatives in general court, did elect \_\_\_\_\_, being inhabitants of said district, to represent them in the general court to be holden on the first Wednesday of January next.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_

Such certificate shall have a return thereon, signed by the officer authorized to give such notice, and stating that notice of the choice was given to the persons therein mentioned, and that said persons were summoned to attend the general court accordingly.

SECT. 18. When a vacancy occurs in a representative district, the speaker of the house of representatives shall in the precept which he may issue by order of the house giving notice of such vacancy, appoint a time for an election to fill the same. Upon the reception of such precept, the mayor and aldermen of a city and the selectmen of the towns comprising the district, shall issue their warrants for an election on the day named in the precept; and similar proceedings shall be had in filling such vacancy as in the original election of representatives.

SECT. 19. The secretary of the commonwealth shall furnish to cities and towns blank forms for certificates, transcripts, and returns, required under this chapter. Such blanks for returns shall have printed thereon sections fifteen, sixteen, and nineteen, of this chapter, and the first four sections of chapter two.

SECT. 20. City or town officers wilfully neglecting or refusing to perform the duties required of them under this chapter, shall for each offence forfeit a sum not exceeding two hundred dollars.

SECT. 21. Selectmen giving a certificate of election to a person voted for as representative to the general court, not in accordance with the declaration of the vote in open town meeting at the time of the election, shall forfeit three hundred dollars.

SECT. 22. Clerks wilfully signing a certificate not in conformity with the result of an election, as apparent by the transcripts and returns, shall forfeit a sum not exceeding three hundred dollars.

SECT. 23. Towns and cities may provide suitable compensation to clerks and selectmen for services performed by them under the requirements of this chapter.

SECT. 24. In case of a vacancy in the office of town, city, or ward clerk, or any disability in such clerk to perform the duties required by this chapter, the selectmen, mayor and aldermen, or board of aldermen, or warden, may appoint a clerk *pro tempore*, who shall be sworn and perform such duties.



## CHAPTER 9.

OF THE ELECTION OF REPRESENTATIVES IN CONGRESS AND ELECTORS OF  
PRESIDENT AND VICE-PRESIDENT.

## REPRESENTATIVES IN CONGRESS.

## SECTION

1. Division of commonwealth into congressional districts.
2. Towns forming the several districts.
3. Representatives in congress when to be chosen.
4. Return of votes.
5. Proceedings in case of no choice.
6. Proceedings in case of vacancies.
7. Sheriffs to transmit precepts to selectmen.
8. Penalty for neglect of city and town officers.

ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF THE  
UNITED STATES.

9. Electors of president and vice-president to be chosen.

## SECTION

10. Choice of electors, when to take place.
11. Names of electors to be on one ballot.
12. Return of votes.
13. Governor and council to count votes and notify persons elected.
14. If a majority are not chosen, residue to be chosen by general court.
15. Time and place of meeting of electors; vacancies, how filled.
16. Electors to vote, and certify and transmit their votes to seat of government.
17. Compensation of electors.
18. Duties of sheriffs and town officers in election of governor, &c., to be observed in election of electors. Penalties.

## REPRESENTATIVES IN CONGRESS.

[Sections 1 and 2 superseded 1862, 226; 1866, 59; 1872, 300.]

SECTION 1. (S.) [For the purpose of electing representatives in the congress of the United States, the state is divided into eleven districts, each of which shall elect one representative, being an inhabitant of the same district.]

Division of commonwealth into congressional districts.  
1862, 143.

SECT. 2. (S.) [The districts are as follows, to wit:—

The several towns in the counties of Barnstable, Dukes county, and Nantucket, with the city of New Bedford, and the towns of Dartmouth, Fairhaven, Carver, Kingston, Marion, Mattapoisett, Plymouth, Plympton, Rochester, and Wareham, form District Number One.

District No. 1.  
1862, 226.  
1867, 202.  
See 1872, 300.

The city of Fall River, and the towns of Attleborough, Berkley, Dighton, Easton, Freetown, Mansfield, Norton, Pawtucket, Raynham, Rehoboth, Seekonk, Somerset, Swanzev, Taunton, Westport, Abington, Bridgewater, Duxbury, East Bridgewater, Halifax, Hanover, Hanson, Hingham, Hull, Lakeville, Marshfield, Middleborough, North Bridgewater, Pembroke, Scituate, South Scituate, West Bridgewater, and Cohasset, form District Number Two.

District No. 2.  
1863, 338.  
See 1872, 300.

The towns of Bellingham, Braintree, Canton, Dedham, Dorchester, Dover, Foxborough, Franklin, Medfield, Medway, Milton, Needham, Quincy, Randolph, Sharon, Stoughton, Walpole, West Roxbury, Weymouth, Wrentham, Blackstone, Mendon, Milford, Northbridge, Upton, Uxbridge, Brighton, Holliston, Newton, Sherborn, and Watertown, form District Number Three.

District No. 3.  
See 1872, 300.

The city of Roxbury, the town of Brookline, and the wards numbered seven, eight, nine, ten, eleven, and twelve, in the city of Boston, form District Number Four.

District No. 4.  
See 1872, 300.

The wards numbered one, two, three, four, five, and six, in the city of Boston, the cities of Cambridge and Chelsea, and the towns of North Chelsea and Winthrop, form District Number Five.

District No. 5.  
See 1872, 300.

The cities of Lynn, Newburyport, and Salem, and the towns of Amesbury, Beverly, Essex, Georgetown, Gloucester, Groveland, Hamilton, Ipswich, Manchester, Marblehead, Nahant, Newbury, Rockport, Rowley, Salisbury, Swampscott, Wenham, and West Newbury, form District Number Six.

District No. 6.  
1862, 310.  
1863, 114.  
See 1872, 300.

The cities of Charlestown and Lawrence, and the towns of Andover, Boxford, Bradford, Danvers, Haverhill, Lynnfield, Methuen, Middleton, North Andover, Saugus, South Danvers, Topsfield, Burlington, Lexington, Malden, Medford, Melrose, North Reading, Reading, Somerville,

District No. 7.  
1863, 71.  
1865, 160.  
1866, 385.  
See 1872, 300.

South Reading, Stoneham, Waltham, West Cambridge, Wilmington, Winchester, and Woburn, form District Number Seven.

District No. 8.  
See 1872, 300.

The city of Lowell, and the towns of Acton, Ashby, Ashland, Bedford, Billerica, Boxborough, Carlisle, Chelmsford, Concord, Dracut, Dunstable, Framingham, Groton, Hopkinton, Lincoln, Littleton, Marlborough, Natick, Pepperell, Shirley, Stow, Sudbury, Tewksbury, Townsend, Tyngsborough, Wayland, Westford, Weston, Berlin, Bolton, Harvard, Lunenburg, Northborough, Southborough, and Westborough, form District Number Eight.

District No. 9.  
See 1872, 300.

The towns of Ashburnham, Auburn, Barre, Boylston, Brookfield, Charlton, Clinton, Douglas, Dudley, Fitchburg, Gardner, Grafton, Holden, Hubbardston, Lancaster, Leicester, Leominster, Millbury, New-Braintree, North Brookfield, Oakham, Oxford, Paxton, Princeton, Rutland, Shrewsbury, Southbridge, Spencer, Sterling, Sturbridge, Sutton, Templeton, Webster, West Boylston, Westminster, and Winchendon, and the city of Worcester, form District Number Nine.

District No. 10.  
1855, 365.  
See 1872, 300.

The towns of Athol, Dana, Hardwick, Petersham, Phillipston, Royals-ton, Warren, West Brookfield, Erving, Leverett, Montague, New Salem, Northfield, Orange, Shutesbury, Sunderland, Warwick, Wendell, Whately, Amherst, Belchertown, Easthampton, Enfield, Granby, Greenwich, Hadley, Hatfield, Northampton, Pelham, Prescott, South Hadley, Ware, Agawam, Brimfield, Chicopee, Holland, Holyoke, Longmeadow, Ludlow, Monson, Palmer, Wales, West Springfield, Wilbraham, and the city of Springfield, form District Number Ten.

District No. 11.  
1856, 35.  
See 1872, 300.

The towns of Ashfield, Bernardston, Buckland, Charlemont, Colrain, Conway, Deerfield, Gill, Greenfield, Hawley, Heath, Leyden, Monroe, Rowe, Shelburne, Chesterfield, Cummington, Goshen, Huntington, Middlefield, Plainfield, Southampton, Westhampton, Williamsburg, Worthington, Blandford, Chester, Granville, Montgomery, Russell, Southwick, Tolland, and Westfield, and the several towns in the county of Berkshire, form District Number Eleven.]

Representatives  
in congress when  
to be chosen.  
R. S. 6, § 8.  
1856, 224.  
1 Mass. 424.

SECT. 3. The mayor and aldermen and selectmen of the several cities and towns shall as provided in chapter seven call meetings to be held on the Tuesday next after the first Monday in November in the year one thousand eight hundred and sixty, and thence afterwards, biennially, on the Tuesday next after the first Monday in November, for the voters to give their votes for representatives in congress.

Return of votes.  
R. S. 6, § 4.  
1857, 171, §§ 1, 2.  
1857, 236, § 1.

SECT. 4. The clerks in making their returns of votes for representatives to congress under section fifteen of chapter seven, shall transmit them in envelopes expressing on the outside the district in which the votes were given.

Proceedings in  
case of no choice.  
R. S. 6, § 6.

SECT. 5. In case of no choice in a congressional district, the governor shall cause precepts to issue to the mayor and aldermen and selectmen of the several cities and towns in the district, directing them to call a new meeting on the day appointed in such precept, for the voters to give their votes for a representative in congress. The precept shall be accompanied with a list of all the persons voted for in the district who received fifty votes or more according to the next preceding return, and shall show the number of votes for each of such persons; similar proceedings shall be had thereon and the same returns made as in an original election; and the like proceedings shall be repeated as often as occasion may require.

Proceedings in  
case of vacancies.  
R. S. 6, § 7.

SECT. 6. When a vacancy happens in the representation of this commonwealth in congress, the governor shall cause precepts to issue for a new election in the district where the vacancy exists; and similar proceedings shall be had thereon as in an original election.

Sheriffs to trans-  
mit precepts to  
selectmen.  
R. S. 6, § 8.

SECT. 7. The several sheriffs, upon receiving precepts from the governor for the election of a representative in congress, shall seasonably transmit them to the officers of the towns or cities within their respective counties to whom they are directed.

SECT. 8. If any city or town officer wilfully neglects or refuses to perform any duty required of him in this chapter, he shall forfeit for each offence a sum not exceeding two hundred, nor less than thirty dollars.

Penalty for neglect of city and town officers.  
R. S. 6, § 12.

ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES.

SECT. 9. In each year, when the election of president and vice-president of the United States takes place, there shall be chosen as many electors of president and vice-president as the commonwealth is at such time entitled to.

Electors of president and vice-president to be chosen.  
R. S. 6, § 13.

SECT. 10. The mayor and aldermen and selectmen of the several cities and towns, shall, in the manner provided in section three of chapter seven, call meetings to be held on the Tuesday next after the first Monday in November of such year, for the voters to give their votes for the whole number of electors to which the commonwealth is entitled.

Choice of electors, when to take place.  
1848, 36, § 1.

SECT. 11. The names of all the electors to be chosen shall be written on each ballot; and each ballot shall contain the name of at least one inhabitant of each congressional district into which the commonwealth shall be then divided; and shall designate the congressional district to which he belongs.

Names of electors to be on one ballot.  
R. S. 6, § 15.

SECT. 12. Votes for electors shall be counted, recorded, certified, sealed, and transmitted, to the secretary of the commonwealth, as provided in sections fifteen, sixteen, and seventeen of chapter seven.

Return of votes.  
1844, 167, § 1.  
1852, 229, § 2.  
1867, 171, §§ 1, 2.

SECT. 13. The governor and council shall open and examine such returns and count the votes, and the several persons who have received the highest number of votes so returned shall be declared elected, and the governor shall forthwith transmit to each person so chosen a certificate of his election.

Governor, &c., to count votes, and notify persons elected.  
1861, 40, § 2.

SECT. 14. If upon examination of the votes it appears that a majority of the whole number of electors are not chosen, the governor shall forthwith by proclamation, call the legislature together, which shall, by joint ballot of the senators and representatives assembled in one room, choose as many electors as are necessary to complete the full number.

If a majority are not chosen, re-advised to be chosen by general court.  
1861, 40, § 3.

SECT. 15. The electors shall convene at the state house in Boston on the Tuesday preceding the first Wednesday of December following their election, at three o'clock in the afternoon. In case of the death or absence of an elector, or in case the number of electors is deficient, the electors present shall forthwith elect from the citizens of the commonwealth so many persons as shall supply the deficiency.

Time and place of meeting of electors.  
Vacancies, how filled.  
R. S. 6, § 21.  
Art. amend. 12.  
U. S. const.  
U. S. Stat. 1792, 8.  
1804, 50.  
Electors to vote, and certify and transmit their votes to seat of government.  
R. S. 6, § 22.  
U. S. const. art. amend. 12.  
U. S. Stat. 1792, 8.  
1804, 50.

SECT. 16. The electors so convened shall on said first Wednesday of December vote by ballot for one person for president and one person for vice-president of the United States; one of whom at least shall not be an inhabitant of this commonwealth. They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president and vice-president and of the number of votes given for each; which lists they shall sign, and certify, and transmit, sealed up, to the seat of the government of the United States, directed to the president of the senate; and they shall in all respects proceed conformably to the constitution and laws of the United States.

SECT. 17. Each elector shall receive three dollars a day for attendance, and the same compensation for travel as is allowed to a member of the general court.

Compensation.  
R. S. 6, § 23.  
1868, § 2.

SECT. 18. All laws in relation to the duties of sheriffs, city and town officers, and voters, in the election of civil officers, shall, as far as the same may be applicable, apply to the meetings and elections held respecting the choice of electors of president and vice-president of the United States; and like penalties shall be incurred for the violation thereof.

Duties of sheriffs and town officers in election of electors.  
R. S. 6, § 24.

## CHAPTER 10.

## OF THE ELECTION OF DISTRICT AND COUNTY OFFICERS.

## SECTION

1. Election of district and county officers.
  2. district attorneys.
  3. clerks of courts.
  4. registers of probate and insolvency.
  5. sheriffs and commissioners of insolvency.
  6. county commissioners.
  7. special commissioners.
  8. Not more than one commissioner to be chosen from the same place.
  9. Election of county treasurers and registers of deeds.
- FAILURES TO ELECT.
10. In case of failures to elect district attorneys,

## SECTION

- clerks of courts, registers of probate and insolvency, &c.
11. commissioners and special commissioners.
  12. county treasurers and registers of deeds.

## VACANCIES.

13. Vacancies in the office of district-attorney, &c., how filled.
14. commissioner and special commissioner.
15. county treasurer or register of deeds.
16. Penalty on selectmen, &c., for neglect of duty.

Election of district and county officers.  
Amend. const. art. 19.  
R. S. 14, § 16.  
1864, 77, §§ 1, 5.  
1865, 92, §§ 1, 5.  
1866, 173, §§ 1, 2, 5.  
1868, 93, §§ 4, 5.

SECTION 1. District-attorneys, clerks of the courts, registers of probate and insolvency, sheriffs, commissioners of insolvency, county commissioners, special commissioners, county treasurers, and registers of deeds, shall be chosen by ballot on the Tuesday next after the first Monday of November in the years in which said officers are respectively to be elected except as hereinafter provided. Those persons now holding said offices shall continue to hold the same during the terms for which they are elected, unless sooner removed as provided by law.

## DISTRICT-ATTORNEYS.

district attorneys.  
R. S. 18, § 37.  
1866, 173, §§ 1, 5.

SECT. 2. In the year eighteen hundred and sixty-two and every third year thereafter, there shall be elected by the voters in each of the districts into which the commonwealth is divided for the administration of the criminal law, a district-attorney, who shall be a resident within the district. The officers so elected shall hold their offices for three years from the first Wednesday in January following their election.

## CLERKS OF THE COURTS.

clerks of courts.  
1866, 173, §§ 2, 6, 7.  
1867, 1.  
1869, 196, § 9.

SECT. 3. In the year eighteen hundred and sixty-one and every fifth year thereafter, there shall be elected by the voters in the county of Suffolk, a clerk of the supreme judicial court for said county, and two clerks of the superior court for said county, one for the civil, and one for the criminal, business, and by the voters in each of the other counties a clerk of the courts for the county, who shall act as clerk of the supreme judicial court, the superior court, and the county commissioners. Such clerks shall hold their offices for five years from the first Wednesday of January following their election, unless sooner removed as provided by law.

## REGISTERS OF PROBATE AND INSOLVENCY.

registers of probate and insolvency.  
1868, 93, § 4.

SECT. 4. In the year eighteen hundred and sixty-three and every fifth year thereafter, there shall be elected by the voters in each county a register of probate and insolvency for the county, who shall hold his office for five years from the first Wednesday of January following his election.

## SHERIFFS AND COMMISSIONERS OF INSOLVENCY.

sheriffs and

SECT. 5. In the year eighteen hundred and sixty-two and every

third year thereafter, there shall be elected by the voters in each county a sheriff for the county, and in the county of Worcester four commissioners of insolvency, and in each of the other counties three commissioners of insolvency. Each of said officers shall hold his office for three years from the first Wednesday in January following his election.

commissioners of insolvency.  
1848, 304, § 1.  
1851, 322.  
1852, 112.  
1856, 173, §§ 1, 5.

COUNTY COMMISSIONERS AND SPECIAL COMMISSIONERS.

SECT. 6. The voters in the county of Middlesex with those of the city of Chelsea and the towns of North Chelsea and Winthrop, and the voters in each of the other counties except Suffolk and Nantucket shall annually elect one county commissioner for the county, who shall hold his office for three years and until his successor is elected and qualified. There shall be three county commissioners in each county except Suffolk and Nantucket.

Election of county commissioners.  
R. S. 14, §§ 16, 24.  
1850, 299, § 2.  
1852, 53.  
1854, 77, § 3.  
8 Gray, 126.

SECT. 7. In the year eighteen hundred and sixty-two and every third year thereafter, there shall be elected by the voters in the county of Middlesex with those of the city of Chelsea and the towns of North Chelsea and Winthrop, and by the voters in each of the other counties except Suffolk and Nantucket, two special commissioners for the county, who shall hold their offices for three years and until their successors are elected and qualified.

special commissioners.  
R. S. 14, §§ 21, 24.  
1850, 299, § 2.  
1852, 53.  
1854, 77, § 6.

SECT. 8. Not more than one of the county commissioners and special commissioners in each county, except the county of Dukes County, shall be chosen from the same city or town. When at any election, except in the county of Dukes County, two persons residing in the same city or town have a plurality of votes, whereby one would otherwise be elected county commissioner and the other special commissioner, or both, to either of those offices, the one who has the highest number of votes shall be elected, and when both have an equal number neither of them shall be deemed elected. When a person residing in a city or town in which a county commissioner or special commissioner who is to remain in office resides, has a plurality of the votes, he shall not be elected.

Not more than one commissioner to be chosen from the same place.  
R. S. 14, § 23.  
1854, 77, §§ 3, 6, 7.

1874, 329

COUNTY TREASURERS AND REGISTERS OF DEEDS.

SECT. 9. In the year eighteen hundred and sixty-one and every third year thereafter, there shall be elected by the voters in each county, except Suffolk and Nantucket, a suitable person residing therein, to be treasurer of the county, who shall hold his office for three years and until his successor is elected and qualified. At the same times there shall be elected by the voters in each district for the registry of deeds, and in each county not divided into such districts, a suitable person residing therein to be register of deeds for such district or county, who shall hold his office for three years and until his successor is elected and qualified, unless sooner removed as provided by law.

Election of county treasurer and register of deeds.  
R. S. 14, §§ 101, 111, 112, 113, 114.  
1837, 186.  
1855, 79.  
1855, 92, §§ 1, 3.  
1856, 118.  
2 Gray, 370.  
1869, 445, § 2.

FAILURES TO ELECT.

SECT. 10. If on the days aforesaid there is a failure to elect a district attorney, clerk of the courts, register of probate and insolvency, sheriff, or commissioner of insolvency, in any district or county, the governor shall by proclamation declare such failure and order a new election to be had on such day as he shall appoint, and shall continue so to order such elections until a choice is effected.

In case of failures to elect district attorney, clerk of courts, register of probate and insolvency, &c.  
1856, 173, § 4.  
1858, 93, § 12.

SECT. 11. If on said days there is a failure to elect a county commissioner or special commissioner for any county, the board of examiners shall forthwith issue their warrant to the mayor and aldermen and selectmen of the cities and towns in such county, or in the county of Middlesex, to the mayor and aldermen and selectmen of the cities and

commissioners and special commissioners.  
R. S. 14, §§ 19, 20.

towns in said county, and of Chelsea, North Chelsea, and Winthrop, requiring them on a day mentioned in their warrant, which shall be within twenty days after issuing the same, to call meetings of the voters in their respective places for completing such elections, and they shall continue so to issue their warrants until a choice is effected. At each election the examiners shall furnish the mayor and aldermen and selectmen with a list of the persons not elected, who at the preceding election received more than twenty-five votes.

In case of failure to elect county treasurer and register of deeds. R. S. 14, §§ 107, 108, 109. R. S. act of amend. § 2. 1856, 118. See § 16.

SECT. 12. If on said days there is a failure to elect a county treasurer or register of deeds for any county or district, the county commissioners shall forthwith issue their warrant to the mayor and aldermen and selectmen of the several cities and towns in such county or district, requiring them on a day mentioned in the warrant to call meetings of the voters in their respective places for completing such elections, and they shall continue so to issue their warrants until a choice is effected. The commissioners shall in such cases meet and count the votes at such times as they shall adjourn to, for that purpose.

#### VACANCIES.

Vacancies in office of clerk, &c., how filled. 1856, 173, §§ 8, 9. See § 16. Ch. 17, § 81. Ch. 119, § 12.

SECT. 13. If a person elected to either of the offices mentioned in section ten is removed therefrom, or otherwise vacates the same, an election to fill such office for the remainder of his term shall be ordered by the governor, and shall be had on the Tuesday next after the first Monday of November.

commissioner and special commissioner. R. S. 14, § 22. 1860, 236, § 2. 1852, 68. See § 16.

SECT. 14. A vacancy in the office of county commissioner or special commissioner of any county may be filled at any time when the board of examiners think it expedient; and they shall issue their warrant therefor to the mayor and aldermen and selectmen of the cities and towns of such county, or in the county of Middlesex to the mayor and aldermen and selectmen of the cities and towns therein, and of Chelsea, North Chelsea, and Winthrop, and the person chosen shall fill the office for the remainder of the term.

county treasurer or register of deeds. R. S. 14, § 107. R. S. act of amend. § 3. 1856, 118. See § 16. Ch. 17, § 87. Penalty on selectmen, &c., for neglect. R. S. 14, § 28. 1839, 135.

SECT. 15. If a person elected county treasurer or register of deeds resigns or otherwise vacates the office, an election to fill the same for the remainder of the term shall be had on the Tuesday next after the first Monday of November upon the order of the county commissioners, who shall issue their warrant therefor as in the case of failure to elect.

SECT. 16. If the mayor and aldermen or selectmen of any place wilfully neglect to comply with a warrant or order issued under either of the six preceding sections, each of them so neglecting shall forfeit a sum not exceeding two hundred dollars.

## TITLE III.

### OF THE ASSESSMENT AND COLLECTION OF TAXES.

CHAPTER 11.—Of the Assessment of Taxes.

CHAPTER 12.—Of the Collection of Taxes.

## CHAPTER 11.

### OF THE ASSESSMENT OF TAXES.

#### PERSONS AND PROPERTY SUBJECT TO TAXATION.

##### SECTION

1. Persons subject to a poll tax.
2. Property subject to taxation.
3. Real estate.
4. Personal estate.

#### PROPERTY AND PERSONS EXEMPTED FROM TAXATION.

5. Property and polls exempted: 1st, property of the United States; 2d, of the commonwealth, except: 3d, of certain institutions; 4th, of school districts; 5th, Bunker Hill Monument; 6th, household furniture, &c.; 7th, churches; 8th, cemeteries, &c.; 9th, estate of agricultural societies; 10th, of certain females to amount of five hundred dollars; 11th, cattle, &c.; 12th, Indians; 13th, polls and estates of persons unable to pay.

#### WHERE POLLS AND PROPERTY SHALL BE ASSESSED.

6. Poll tax, where assessed.
7. Person to be taxed where he designates his place of residence to be.
8. Real estate, where and to whom taxed.
9. Tenant may recover of landlord taxes paid, unless, &c.
10. Real estate of person deceased may be assessed to heirs, &c. One liable for whole with right to contribution.
11. or to estate of deceased where title is in dispute.
12. Personal estate, taxed where owner resides. Except—stock in trade, &c., employed in other towns.  
     machinery, &c.  
     horns, &c.  
     of persons under guardianship.  
     personal property held in trust, &c.  
     deposited to accumulate.  
     of deceased persons.
13. Property held as a ministerial fund.
14. Personal property mortgaged, &c.
15. Partners may be jointly taxed for stock in trade.

#### MANNER OF ASSESSING TAXES.

##### SECTION

16. Ships of copartners assessed where owners reside.
17. State treasurer to send tax warrants to sheriffs.
18. By what rules all taxes to be assessed.
19. Penalty if assessors refuse to obey warrant. In such case commissioners to appoint.
20. Town, &c., liable for state or county tax not assessed.
21. Keepers of taverns, &c., to give names of persons taxable. Penalty.
22. Assessors to give notice, to bring in lists of polls and property.
23. may verify lists by oath of party.
24. to make a fair cash valuation.
25. to receive lists as true, unless, &c.
26. Penalty for agreement to assessment on limited amount, &c., with view to residence.
27. Assessors shall make an estimate when lists are not brought in.
28. Estimate conclusive, unless, &c.
29. State, county and town taxes in one assessment.
30. County and city taxes in Boston. Chelsea, &c., exempt.
31. Proportions to be assessed on polls, and property.
32. Assessors may add five per cent. for convenience of apportionment.
33. to deposit copy of valuation in office.
34. What shall be contained in valuation: estates of inhabitants; estates of non-residents.
35. Form of tax list for collectors.
36. Valuation list to be sworn to by assessors.
37. Penalty on assessor omitting to take oath, &c.
38. Assessors to commit lists to collectors, &c.
39. Contents and form of warrant.
40. If warrant is lost, &c., new one may issue.
41. Discounts may be allowed.
42. rates of, to be posted up.
43. Abatements.
44. Costs before abatement, &c.

Writing Lists. 1876-225

74

1875-209

Bank shares  
1873 c. 315

## ASSESSMENT OF TAXES.

[CHAP. 11.]

### SECTION

45. If assessors refuse to abate taxes, &c.
46. No abatement allowed unless, &c.
47. To be applied for within six months.
48. If tax is paid, amount of abatement to be paid out of town treasury.
49. Party entitled to certificate of his abatement.
50. Assessors to assess persons applying seven days before an election.

### SECTION

51. Assessors to be responsible only for fidelity, &c.
52. Pay of assessors.

### REASSESSMENT OF TAXES.

53. Taxes, invalid, &c., except poll taxes, may be reassessed.

### ILLEGAL ASSESSMENTS.

54. to be void to extent of illegal excess.

## PERSONS AND PROPERTY SUBJECT TO TAXATION.

[See 1864, 172, 208; 1867, 101; 1868, 211, 320; 1872, 321.]

SECTION 1. A poll tax shall be assessed in the manner hereinafter provided, on every male inhabitant of the commonwealth above the age of twenty years, whether a citizen of the United States or an alien.

SECT. 2. All property, real and personal, of the inhabitants of this state, not expressly exempted by law, shall be subject to taxation as hereinafter provided.

SECT. 3. Real estate, for the purpose of taxation, shall include all lands within this state, and all buildings and other things erected on or affixed to the same.

SECT. 4. Personal estate shall, for the purposes of taxation, include goods, chattels, money, and effects, wherever they are, ships and vessels at home or abroad, money at interest, and other debts due the persons to be taxed more than they are indebted or pay interest for, public stocks and securities, stocks in turnpikes, bridges, and moneyed corporations, within or without the state, the income from an annuity, and so much of the income from a profession, trade, or employment, as exceeds the sum of six hundred dollars a year; but no income shall be taxed which is derived from property subject to taxation.

## PROPERTY AND PERSONS EXEMPTED FROM TAXATION.

SECT. 5. The following property and polls shall be exempted from taxation:—

First. The property of the United States.

Second. The property of the commonwealth, except real estate of which the commonwealth is in possession under a mortgage far condition broken.

Third. The personal property of literary, benevolent, charitable, and scientific institutions incorporated within this commonwealth, and the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated.

Fourth. All property belonging to common school districts, the income of which is appropriated to the purposes of education.

Fifth. The Bunker Hill Monument.

Sixth. The household furniture of every person, not exceeding one thousand dollars in value, his wearing apparel, farming utensils, and mechanics' tools necessary for carrying on his business.

Seventh. Houses of religious worship, and the pews and furniture (except for parochial purposes); but portions of such houses appropriated for purposes other than religious worship shall be taxed at the value thereof to the owners of the houses.

Eighth. Cemeteries, tombs, and rights of burial, so long as the same shall be dedicated for the burial of the dead.

Ninth. The estate, both real and personal, of incorporated agricultural societies.

Tenth. The property to the amount of five hundred dollars of a widow or unmarried female, and of any female minor whose father is deceased, if her whole estate real and personal not otherwise exempted

### Poll tax.

- R. S. 7, § 1.
- 1843, 87.
- 1844, 145.
- 7 Mass. 523.
- 4 Met. 181.
- 5 Met. 594.

### Property tax.

- R. S. 7, § 2.
- 4 Met. 584.
- 106 Mass. 540.
- Real.
- R. S. 7, § 3.
- 10 Cush. 514.

### Personal.

- R. S. 7, § 4.
- 1839, 139, § 2.
- 1849, 149.
- 16 Pet. 435.
- 6 Pick. 98.
- 16 Pick. 572.
- 9 Met. 73, 199.
- 7 Cush. 900.
- 10 Cush. 128.
- See 1866, 48.
- 1867, 160.
- 10 Allen, 100.
- 12 Allen, 309, 598.
- 101 Mass. 383.
- 105 Mass. 526.
- 106 Mass. 540.

### Exempted.

- R. S. 7, § 5.
- See Ch. 12, § 75.
- See 1862, 224, § 12.
- Property of the United States; of the state.
- 1853, 122.
- 4 Met. 564.
- certain institutions.
- 2 Cush. 611.
- 12 Cush. 54.
- 11 Allen, 470.
- 99 Mass. 599.
- school districts.
- 1843, 86.

### Bunker Hill

- Monument.
- Household furniture, &c.
- See 1865, 206, § 1.

### Churches.

- 1841, 127.
- 1 Met. 538.
- See 1865, 206, § 1.

### Cemeteries, &c.

- 1841, 114, § 7.

### Estate of agricultural societies.

- 1851, 215.

### of certain females.

- 1868, 43, § 1.
- See 1872, 321, § 12.

\$2000.  
1873 c. 354

1874.227

116th. 181



from taxation does not exceed in value the sum of one thousand dollars.

Eleventh. Mules, horses, and neat cattle, less than one year old; and swine and sheep less than six months old.

Twelfth. The polls and estates of Indians.

Thirteenth. The polls and any portion of the estates of persons who by reason of age, infirmity, and poverty, are in the judgment of the assessors unable to contribute fully towards the public charges.

Cattle, &c.

Indians.

See 1869, 468.

Polls and estates of persons unable to pay.

See 1872, 321, § 12.

#### WHERE POLLS AND PROPERTY SHALL BE ASSESSED.

SECT. 6. The poll tax shall be assessed upon each taxable person, in the place where he is an inhabitant on the first day of May in each year, except in cases otherwise provided for by law. The poll tax of minors liable to taxation shall be assessed to, and in the places of the residence of, the parents, masters, or guardians, having control of the persons of such minors; but if a minor has no parent, master, or guardian, within this state, he shall be personally taxed for his poll, as if he were of full age. The poll tax of every other person under guardianship shall be assessed to his guardian in the place where the guardian is taxed for his own poll.

Poll tax, where assessed.

R. S. 7, § 6.

1 Met. 242, 250.

4 Met. 181.

11 Cush. 302.

2 Gray, 484.

12 Cush. 44, 52,

54.

12 Allen, 111.

SECT. 7. A taxable person in a city or town on the first day of May who, when inquired of by the assessors thereof, refuses to state where he considers his legal residence to be, shall for the purpose of taxation be deemed an inhabitant of such place. If when so inquired of he designates another place as his legal residence, said assessors shall notify the assessors of such place, who, upon receiving the notice, shall tax such person as an inhabitant of their city or town. But such person shall not be exempt from the payment of a tax legally assessed upon him in the city or town of his legal domicil.

Person to be taxed where he designates his place of residence to be.

1850, 276.

SECT. 8. Taxes on real estate shall be assessed in the city or town where the estate lies, to the person who is either the owner or in possession thereof on the first day of May. Mortgagors of real estate shall, for the purposes of taxation, be deemed owners until the mortgagee takes possession, after which the mortgagee shall be deemed the owner.

Real estate, where taxed.

R. S. 7, § 7.

1 Cush. 142.

4 Cush. 260.

2 Gray, 185.

7 Gray, 127, 277.

See 1872, 306.

16 Gray, 583.

4 Allen, 57.

101 Mass. 310.

SECT. 9. When a tenant paying rent for real estate is taxed therefor, he may retain out of his rent the taxes paid by him, or may recover the same in an action against his landlord, unless there is an agreement to the contrary.

Tenant may recover of landlord, taxes paid, unless, &c.

R. S. 7, § 8.

SECT. 10. The undivided real estate of a deceased person may be assessed to his heirs or devisees without designating any of them by name, until they have given notice to the assessors of the division of the estate and the names of the several heirs or devisees; and each heir or devisee shall be liable for the whole of such tax, and when paid by him he may recover of the other heirs or devisees their respective portions thereof.

Real estate of person deceased may be assessed to heirs, &c. One liable for whole, with right to contribution.

R. S. 7, § 12.

SECT. 11. The real estate of a person deceased, the right or title to which is doubtful or unascertained by reason of litigation concerning the will of the deceased, or the validity thereof, may be assessed in general terms to the estate of the deceased; and said tax shall constitute a lien upon the land so assessed, and may be enforced by the sale of the same or a part thereof, as provided for enforcing other liens for taxes on real estate.

or to estate of deceased where title is in dispute.

1847, 226.

9 Gray, 433.

16 Gray, 232, 337.

97 Mass. 321.

SECT. 12. All personal estate within or without this state, shall be assessed to the owner in the city or town where he is an inhabitant on the first day of May, except as follows: 6 Pick. 98. 1 Met. 242, 250. 4 Cush. 546

11 Cush. 332. 3 Gray, 404. 7 Gray, 277. 14 Allen, 339. 101 Mass. 329. 103 Mass. 279. 104 Mass. 587.

First. All goods, wares, merchandise, and other stock in trade, (except ships or vessels owned by a copartnership,) including stock employed in the business of manufacturing or of the mechanic arts, in cities or towns

Personal estate, taxed where owner resides.

R. S. 7, §§ 9, 10.

1839, 133, § 2.

except stock in trade, &c., employed in other towns.

110 m. 47  
115 m. 30  
117 m. 233

1839, 139, § 1.  
1859, 114.  
4 Met. 186.  
4 Cush. 548.  
10 Cush. 85.  
6 Gray, 579.  
13 Gray, 491.

Machinery,  
where taxed, &c.  
1837, 86.  
12 Allen, 816.  
100 Mass. 133.

Horses, &c.  
1857, 801, § 1.  
8 Allen, 330.

Property of  
persons under  
guardianship.  
1855, 108.  
1859, 258.  
2 Gray, 494.  
See 1864, 208, § 8.  
4 Allen, 462.  
105 Mass. 523.  
Trust property,  
&c.  
5 Cush. 98.  
6 Gray, 132.  
105 Mass. 523.

Property de-  
posited to accu-  
mulate.  
13 Allen, 267.

of deceased  
persons.  
1848, 235.  
1852, 234.  
5 Pick. 236.  
4 Cush. 1.  
6 Allen, 277.  
102 Mass. 348.  
97 Mass. 322.

Property held as  
a ministerial  
fund.  
R. S. 7, § 10.  
19 Pick. 542.

Personal prop-  
erty, mortgaged,  
&c.  
R. S. 7, § 11.  
10 Met. 334.  
Partners may be  
jointly taxed for  
stock in trade.  
105 Mass. 523.

within the state, other than where the owners reside, whether such owners reside within or without this state, shall be taxed in those places where the owners hire or occupy manufactories, stores, shops, or wharves, whether such property is within said places or elsewhere on the first day of May of the year when the tax is made.

Second. All machinery employed in any branch of manufactures, and belonging to a person or corporation, shall be assessed where such machinery is situated or employed; and, in assessing the stockholders for their shares in any manufacturing corporation, there shall first be deducted from the value thereof, the value of the machinery and real estate belonging to such corporation.

Third. Horses, mules, neat cattle, sheep, and swine, kept throughout the year in places other than those where the owners reside, whether such owners reside within or without this state, and horses employed in stages or other vehicles for the transportation of passengers for hire, shall be assessed to the owners in the places where they are kept.

Fourth. Personal property belonging to persons under guardianship, shall be assessed to the guardian in the place where the ward is an inhabitant, unless the ward resides and has his home without the state, in which case it shall be taxed to the guardian in the place where he is an inhabitant.

Fifth. Personal property held in trust by an executor, administrator, or trustee, the income of which is payable to another person, shall be assessed to the executor, administrator, or trustee, in the place where such other person resides, if within the state, and if he resides out of the state it shall be assessed in the place where the executor, administrator, or trustee, resides, and if there are two or more executors, administrators, or trustees, residing in different places, the property shall be assessed to them in equal portions in such places, and the tax thereon shall be paid out of said income. If the executor, administrator, or trustee, is not an inhabitant of this state, it shall be assessed to the person to whom the income is payable, in the place where he resides.

Sixth. Personal property placed in the hands of a corporation or individual as an accumulating fund for the future benefit of heirs or other persons, shall be assessed to such heirs or persons, if within the state, otherwise to the person so placing it or his executors or administrators until a trustee is appointed to take charge of such property, or the income thereof.

Seventh. The personal estate of deceased persons shall be assessed in the place where the deceased last dwelt. After the appointment of an executor or administrator, it shall be assessed to such executor or administrator until he gives notice to the assessors that the estate has been distributed and paid over to the parties interested therein. Before such appointment it shall be assessed in general terms to the estate of the deceased, and the executor or administrator subsequently appointed shall be liable for the tax so assessed in like manner as though assessed to him.

SECT. 13. Property held by a religious society as a ministerial fund shall be assessed to the treasurer of the society. If such property consists of real estate, it shall be taxed in the town where it lies; if it consists of personal property, it shall be taxed in the town where such society usually hold their meetings.

SECT. 14. Personal property mortgaged or pledged shall, for the purposes of taxation, be deemed the property of the party who has the possession.

SECT. 15. Partners in mercantile or other business, whether residing in the same or different places, may be jointly taxed under their partnership name in the place where their business is carried on, for all the personal property employed in such business, except ships or vessels.

If they have places of business in two or more towns, they shall be taxed in each of such places for the proportion of property employed therein. When so jointly taxed each partner shall be liable for the whole tax.

SECT. 16. Ships or vessels owned by a copartnership shall be assessed to the several partners in their places of residence, proportionally to their interests therein.

R. S. 7, § 18.  
1869, 114.  
9 Cush. 286.  
7 Gray, 182.

Ships of copartners.  
1869, 114.  
See 1870, 328.  
10 Gray, 97.

#### MANNER OF ASSESSING TAXES.

1876 c 189

SECT. 17. (R.) [When a state tax is to be assessed, the treasurer shall send his warrants for the assessing thereof, to the sheriffs of the several counties, who shall immediately transmit them to the assessors to whom they are directed.]

Treasurer to send warrants.  
R. S. 7, § 14.  
(R.) *Repeal and substitute.*  
1867, 106.

SECT. 18. The assessors shall assess state taxes for which they receive warrants from the treasurer, according to the rules prescribed in this chapter. They shall in like manner assess all county taxes which are duly certified to them, all city or town taxes voted by their places, and all taxes duly voted and certified by school districts therein.

By what rules all taxes to be assessed.  
R. S. 7, § 16.  
12 Met. 178.

SECT. 19. If the assessors of a city or town neglect to obey a warrant so received from the treasurer, or to assess such a county, town, or district tax, each assessor so neglecting shall forfeit a sum not exceeding two hundred dollars; and the commissioners in the respective counties shall forthwith appoint other suitable persons to assess such tax, according to the warrant of the treasurer. The persons so appointed shall take the same oath, perform the same duties, and be liable to the same penalties, as are provided in the case of assessors of towns.

Penalty if assessors refuse to obey warrant. In such case commissioners to appoint.  
R. S. 7, §§ 17, 18.

SECT. 20. If within five months after the receipt of a warrant from the state treasurer, or a certificate from the county commissioners requiring the assessment of a tax, the same is not assessed and certified as the law requires, the amount of the tax may be recovered of the city or town where the neglect occurs, in an action of contract by the treasurer of the state or county respectively.

Town, &c., liable for state or county tax not assessed.  
R. S. 8, § 37.  
1852, 312.

SECT. 21. Keepers of taverns and boarding-houses, and masters and mistresses of dwelling-houses, shall, upon application of an assessor in the place where their house is situated, give information of the names of all persons residing therein and liable to be assessed for taxes. Every such keeper, master, or mistress, refusing to give such information or knowingly giving false information, shall forfeit twenty dollars for each offence.

Keepers of taverns, &c., to give names of persons taxable.  
Penalty.  
1837, 176.  
1839, 135.

SECT. 22. Before proceeding to make an assessment, the assessors shall give seasonable notice thereof to the inhabitants of their respective places, at any of their meetings, or by posting up in their city or town one or more notifications in some public place or places, or by some other sufficient manner. Such notice shall require the inhabitants to bring in to the assessors, within a time therein specified, true lists of all their polls and estates, both real and personal, not exempted from taxation.

Assessors to give notice to bring in lists, &c.  
R. S. 7, § 19.  
12 Met. 211.  
5 Cush. 97.  
8 Cush. 66.  
See 1865, 121.  
1869, 190.  
8 Gray, 511.  
101 Mass. 89.

SECT. 23. The assessors shall in all cases require a person bringing in such a list, to make oath that the same is true; which oath may be administered by either of the assessors.

shall verify lists by oath of the party.  
R. S. 7, § 20.

SECT. 24. The assessors of each place shall at the time appointed make a fair cash valuation of all the estate real and personal, subject to taxation therein.

to make cash valuation.  
R. S. 7, § 21  
1863, 819, § 1.  
4 Gray, 254.

SECT. 25. They shall receive as true the list brought in by each individual according to the provisions of this chapter, unless on being thereto required by the assessors, he refuses to answer on oath all necessary inquiries as to the nature and amount of his property.

to receive lists as true, unless, &c.  
R. S. 7, § 22.  
12 Met. 211.  
8 Cush. 64.  
10 Allen, 100.

SECT. 26. Any person who in any way directly or indirectly pro-

Penalty for agreeing to assessment on limited amount, &c., with view to residence, &c.  
12 Allen, 599.

Assessors shall make an estimate, when lists are not brought in.

R. S. 7, § 23.  
8 Cush. 63.

To be conclusive, unless, &c.  
R. S. 7, § 24.  
5 Cush. 97.  
8 Cush. 63.

State, county, and town taxes in one assessment.  
R. S. 7, § 25.

County and city taxes in Boston, how assessed.  
Chelsea, &c., exempt.

R. S. 7, § 26.  
R. S. 14, § 34.  
21 Pick. 64.

Proportions to be assessed on polls, &c.

R. S. 7, § 27.  
1859, 157.

See 1862, 158.  
9 Gray, 39.  
15 Gray, 42.  
1 Allen, 819.

Assessors may add five per cent. for convenience of apportionment.

R. S. 7, § 28.  
to deposit a copy of valuation in office.

R. S. 7, § 29.  
2 Gray, 293.

What shall be contained in valuation.

R. S. 7, § 30.  
See 1861, 167.  
1864, 210.

16 Gray, 293.  
2 Allen, 594.  
102 Mass. 151.  
estates of inhabitants.  
21 Pick. 64.

estates of non-residents.

poses or agrees to an assessment on any specific or limited amount less than he is liable by law to be taxed for, with a view or as an inducement to make any particular place his residence for the purpose of taxation, shall be punished by fine of one thousand dollars; and any assessor guilty of making or assenting to any such proposal shall be subject to a like penalty.

SECT. 27. They [the assessors] shall ascertain as nearly as possible the particulars of the personal estate, and of the real estate in possession or occupation, as owner or otherwise, of any person who has not brought in such list, and make an estimate thereof at its just value, according to their best information and belief.

SECT. 28. Such estimate shall be entered in the valuation, and shall be conclusive upon all persons who have not seasonably brought in lists of their estates, unless they can show a reasonable excuse for the omission.

SECT. 29. The assessors, when they think it convenient, may include in the same assessment their state, county, and town taxes, or any two of them.

SECT. 30. In the city of Boston, all taxes assessed for city or county purposes may be assessed separately, as county taxes and as city taxes, or under the denomination of city taxes only, as the city council from time to time directs. Chelsea, North Chelsea, and Winthrop, shall not be taxed for county purposes.

SECT. 31. The assessors shall assess upon the polls, as nearly as may be, one-sixth part of the whole sum to be raised; but the whole poll tax assessed in one year upon an individual for town, county, and state purposes, except highway taxes separately assessed, shall not exceed one dollar and fifty cents; and the residue of such whole sum shall be apportioned upon property, as provided in this chapter.

SECT. 32. They may add to the amount of a tax to be assessed, such sum, not exceeding five per cent. thereof, as any fractional divisions of the amount may render convenient in the apportionment.

SECT. 33. They shall make a list of the valuation and the assessment thereon, and, before the taxes assessed are committed for collection, shall deposit the same, or an attested copy thereof, in their office, or if there is no office, with their chairman, for public inspection.

SECT. 34. The first part of the list shall exhibit the valuation and assessment of the polls and estates of the inhabitants assessed; and shall contain in separate columns the following particulars, to wit:—

The names of the inhabitants assessed; and opposite to their names,

The number of polls.

The amount of their poll tax.

The description of their real estate.

The true value of their real estate.

The tax assessed on such real estate.

The description of their personal property.

The true value of their personal property.

The tax on their personal property.

The sum total of each person's tax.

The second part shall exhibit the valuation and assessment of the estates of non-resident owners; and shall contain in separate columns the following particulars, to wit:—

The names of the non-resident owners of the property assessed, or such description of them as can be given.

Their places of abode, if known.

The description of their estate.

The true value of such estate.

The tax thereon.

SECT. 35. The tax list committed to the collectors shall be in substance, as follows:

Names.	No. of Polls.	Poll Tax.	Tax on Real Estate.	Tax on Personal Property.	Total.	Time when paid.
--------	---------------	-----------	---------------------	---------------------------	--------	-----------------

NON-RESIDENTS.

Names.	Places of abode, if known.	Tax.
--------	----------------------------	------

Form of tax list for collectors.  
R. S. 7, § 31.  
9 Pick. 97.  
2 Gray, 298.  
See 1868, 211, § 2.

SECT. 36. The assessors, or other persons empowered to assess the taxes in a city or town, shall, at the close of said valuation list, subscribe and take the following oath:

"We, (the assessors, or mayor and aldermen, as the case may be, of ) do hereby solemnly swear that the foregoing list is a full and true list of the names of all persons known to us, who are liable to taxation in , (here insert the name of the city or town,) during the present year, and that the real and personal estate contained in said list, and assessed upon each individual in said list, is a full and accurate assessment upon all the property of each individual, liable to taxation, at its full and fair cash value, according to our best knowledge and belief."

Valuation list to be sworn to by assessors.  
1863, 819, § 2.  
See 1861, 167, § 4.

SECT. 37. Any assessor or other person assessing taxes in a city or town, who omits to take and subscribe the oath prescribed in the preceding section, shall be punished by a fine of ten dollars; but the omission to take and subscribe said oath shall not prevent the collection of a tax otherwise legally assessed.

Penalty on assessors omitting to take oath.  
1867, 806, §§ 1, 2.

SECT. 38. The assessors shall, within a reasonable time, commit said tax list with their warrant to the collector, or if no collector is chosen to a constable, or if there is no constable to the sheriff or his deputy, for collection.

Assessors to commit lists to collectors, &c.  
R. S. 7, §§ 82, 84.  
R. S. 8, § 83.  
R. S. 15, § 83.  
1879 c. 157

SECT. 39. The warrant shall specify the duties of the collector as prescribed by law in the collection of taxes, the times when and the persons to whom he shall pay them in, shall be substantially in the form heretofore used, and need not be under seal.

Contents and form of warrant.  
R. S. 7, § 83.  
1 Met. 328.  
6 Met. 345.  
1874 c. 28,

SECT. 40. When a warrant issued for the collection of taxes is lost or destroyed, the assessors may issue a new warrant therefor, which shall have the same force and effect as the original warrant.

If warrant is lost, &c., new one may issue.  
R. S. 8, § 51.  
R. S. act of amend. § 1.  
Discounts.  
R. S. 7, § 35.  
13 Gray, 476.  
2 Allen, 594.

SECT. 41. Towns, at their annual meeting, and city councils of cities may allow a discount of such sums as they think expedient to persons making voluntary payment of their taxes within such periods of time as they prescribe. In such case the collectors shall make such discount accordingly.

SECT. 42. When such discount is allowed, the assessors, at the time of committing their warrant to the collector, shall post up in one or more public places within the city or town, notice of the rates of discount.

rates to be posted up.  
R. S. 7, § 36.

SECT. 43. A person aggrieved by the taxes assessed upon him, may apply to the assessors for an abatement thereof; and, if he makes it appear that he is taxed at more than his just proportion, they shall make a reasonable abatement. See 1865, 121. 8 Gray, 509. 18 Gray, 321. 12 Allen, 612.

Abatements.  
R. S. 7, § 37.  
9 Met. 205.  
6 Cush. 93.  
7 Cush. 278.  
8 Cush. 56, 66.  
1877 c. 160

SECT. 44. If legal costs have accrued before making such abatement, the person applying for the abatement shall pay the same.

Costs before abatement, &c.  
R. S. 7, § 38.  
See § 48.

SECT. 45. If the assessors refuse to make an abatement to a person, he may, within one month thereafter, make complaint thereof to the county commissioners by filing the same with their clerk, and if upon a hearing it appears that the complainant is overrated, the commissioners shall make such an abatement as they deem reasonable.

If assessors refuse to abate, &c.  
R. S. 7, § 39.  
6 Pick. 98.  
7 Cush. 278.  
8 Cush. 55.  
6 Allen, 131.  
No abatement unless, &c.  
R. S. 7, § 40.  
1863, 819, § 3.  
1867, 806, § 3.  
4 Pick. 399.

SECT. 46. No person shall have an abatement unless he has filed with the assessors a list subscribed by him of his estate liable to taxation, and made oath that it is full and accurate according to his best knowledge and belief. When such list is not filed within the time

1877 c. 160  
If person does not pay within one month of any of his property above it is fair cash value.  
1877 c. 160

5 Pick. 451, 498.  
7 Pick. 106.  
21 Pick. 882.  
4 Met. 599.  
11 Met. 339.  
5 Cush. 97.  
6 Cush. 477.

To be applied for within six months.

R. S. 7, § 41.  
If tax is paid, amount of abatement to be paid out of town treasury.  
13 Gray, 223.  
8 Allen, 546, 550.  
R. S. 7, § 42.  
Party entitled to certificate.  
R. S. 7, § 43.  
Assessors to assess persons seven days before an election, &c.  
1852, 169.  
1858, 107.  
12 Met. 178.  
(R.) *Repeal and substitute.*  
1865, 206.  
See 1865, 68.  
1868, 211, § 2.  
1869, 448.  
102 Mass. 74.

to be responsible only for fidelity, &c.  
R. S. 7, § 44.  
4 Pick. 399.  
5 Pick. 451, 498.  
7 Pick. 106.  
21 Pick. 352.  
4 Met. 599.  
11 Met. 339.

Pay of assessors.  
R. S. 7, § 45.  
1855, 224.  
8 Met. 431.

1873 c. 156

Taxes, invalid, &c., except poll taxes, may be reassessed.  
1859, 118, § 1.  
See 1870, 394.  
18 Allen, 269.  
97 Mass. 822.  
99 Mass. 32, 208.  
102 Mass. 73.

to be void to extent of illegal excess.  
1859, 118, § 4.  
See ch. 12, § 56.  
99 Mass. 208.

specified by the assessors for bringing it in, no complaint from the judgment of the assessors shall be sustained by the county commissioners, unless they are satisfied that there was good cause why such list was not seasonably brought in.

8 Cush. 68. 5 Gray, 385. 8 Gray, 500. 1 Allen, 199. 8 Allen, 546. 101 Mass. 87.

SECT. 47. No abatement shall be allowed to a person unless he makes application therefor within six months after the date of his tax bill.

SECT. 48. A person having an abatement made, shall, if his tax has been paid, be reimbursed out of the treasury of the city or town to the amount of the abatement allowed, together with all charges, except the legal costs provided for in section forty-four.

SECT. 49. Every person whose tax is abated, shall be entitled to a certificate thereof from the assessors, or clerk of the commissioners, or other proper officer.

SECT. 50. (R.) [When a person seven days or more prior to any election gives notice in writing accompanied by satisfactory evidence to the assessors of a city or town, that he was at the time of the last annual assessment of taxes in such place an inhabitant thereof and liable to pay a poll tax, and furnishes under oath a true list of his polls and estate, both real and personal not exempt from taxation, the assessors shall assess him for his polls and estate in the same manner they would have done if such list had been duly brought in; and the assessors shall, five days at least before any election, deposit with the clerk of the place a list of the persons so assessed. The tax thus assessed shall be entered in the tax list of the collector of the city or town, and he shall collect and pay it over as specified in his warrant.]

SECT. 51. The assessors shall not be responsible for the assessment of a tax in a city, town, parish, religious society, or school district, for which they are assessors, when such tax is assessed by them in pursuance of a vote for that purpose, certified to them by the clerk or other proper officer of such city, town, parish, religious society, or school district, except for the want of integrity and fidelity on their own part.

4 Gray, 42. See 1872, 310. 8 Allen, 410. 4 Allen, 382. 97 Mass. 424. 98 Mass. 469. 99 Mass. 208.

SECT. 52. Each assessor shall be paid by his city or town one dollar and fifty cents a day, for every whole day that he is employed in that service, with such other compensation as the city or town shall allow.

#### REASSESSMENT OF TAXES.

SECT. 53. Every tax, except a poll tax, which is invalid by reason of any error or irregularity in the assessment, and which has not been paid, or which has been recovered back, may be reassessed by the assessors for the time being, to the just amount to which, and upon the estate or to the person to whom, such tax ought at first to have been assessed, whether such person has continued an inhabitant of the same city or town or not.

#### ILLEGAL ASSESSMENTS.

SECT. 54. If through any erroneous or illegal assessment or apportionment of taxes, a party is assessed more or less than his due proportion, the tax and assessment shall be void only to the extent of the illegal excess.

## CHAPTER 12.

## OF THE COLLECTION OF TAXES.

## SECTION

- 1 Collectors to collect taxes.
- 2 to complete collections through term expire
- 3 Demand to be made.
- 4 When credit doubtful, taxes may be collected forthwith.
- 5 Persons claiming abatement must produce certificate. Liable to costs.
- 6 Errors in names not to defeat collection.
- 7 Distress and sale to pay taxes, except, &c.
- 8 Distress, how long kept, how advertised, and sold.
- 9 Sale may be adjourned once.
- 10 Seizure of shares, how made.
- 11 Sales of shares seized, how made.
- 12 Surplus to be returned to owner.
- 13 After fourteen days, party may be imprisoned.
- 14 Copy of warrant, &c., to be left with jailer.
- 15 Persons imprisoned for non-payment of taxes, how discharged.
- 16 Collectors, when liable to pay tax, &c.
- 17 may demand aid. Penalty.
- 18 Persons removing from collector's precinct without paying.
- 19 Remedy if persons remove, &c., without paying.
- 20 against executors and administrators.
- 21 against persons who are not owners of the real estate taxed to them
- 22 Taxes to be lien on real estate for two years, &c.
- 23 reassessed to be a lien, unless, &c.
- 24 Resident mortgagees of real estate, when to be called upon for taxes.
- 25 When non-resident appoints attorney, demand how made
- 26 When made, collector to wait two months.
- 27 Affidavit of collector, &c. Evidence of demand on attorney.
- 28 Sales of real estate, how advertised.
- 29 Contents of advertisement.
- 30 Notices, how posted.

## SECTION

31. When name of place has been changed.
32. Affidavit of publishing and posting notifications to be evidence, if recorded.
33. Sale by auction, of sufficient, &c.
34. Collector may adjourn sale, not exceeding seven days in whole.
35. Deed to be given to purchaser, subject, &c. When to be recorded.
36. Owner may redeem within two years, &c.
37. how redeemed when purchaser cannot be found, &c.
38. Duty of treasurer.
39. Mortgagee may pay taxes on real estate in certain cases.
40. shall pay such taxes upon taking possession. Entitled to deed on tender.
41. entitled to receipt for such taxes paid to collector. May tack same to mortgage.
42. S. J. C. to have equity powers.
43. When tax list, &c., is committed to sheriff, &c.
44. Sheriff's fees for collecting.
45. When treasurers are made collectors, how to proceed.
46. Collectors to exhibit accounts every two months, if required.
47. Penalty.
48. Collectors to be credited with abatements, &c.
49. Deficiency in state or county tax, how supplied.
50. Same, when collectors neglect to pay.
51. Remedy for collector's neglect.
52. If collector becomes insane, &c., selectmen may remove him.
53. Tax list of deceased collector, how to be completed. Temporary collector.
54. If collector dies, list to be delivered to selectmen.
55. Compensation.

## RECOVERY OF TAXES COLLECTED.

56. Taxes paid to collector, when recovered back.

[Interest on Taxes, 1862, 146.]

1873 c. 225.

1874 c. 28

SECTION 1. Every collector of taxes, constable, sheriff, or deputy sheriff, receiving a tax list and warrant from the assessors, shall proceed to collect the taxes therein mentioned, according to the warrant.

SECT. 2. The collector shall, unless removed from office as herein-after provided, complete the collection of taxes committed to him, although his term of office expires before such completion.

SECT. 3. Collectors shall before distraining the goods of a person for his tax, demand payment thereof from such person, either personally or at his usual place of abode, if to be found within their precincts.

SECT. 4. When the credit of a person taxed is considered doubtful by the assessors, they may order the collector forthwith to compel payment by distress or imprisonment, whether the tax is made payable immediately, at a future day, by instalments, or otherwise.

SECT. 5. If a person claims the benefit of an abatement, he shall exhibit to the collector demanding his taxes, a certificate of such abatement, from the assessors or other proper officer, as provided in chapter eleven; and shall be liable to pay all costs and officers' fees incurred before exhibiting such certificate.

Collectors to collect taxes.  
R. S. 7, § 84.  
R. S. 8, §§ 1, 33.

to complete collections through term expire.  
R. S. 8, § 2.  
102 Mass. 75.  
Demand to be made.  
R. S. 8, § 8.  
1 Met. 328.  
When credit doubtful, taxes may be collected forthwith.  
R. S. 8, § 12. 1874, 288

Person claiming abatement must produce certificate.  
Liable to costs.  
R. S. 8, § 4.  
9 Met. 504.

Errors in names not to defeat collection.

R. S. 8, § 5.

6 Met. 474.

7 Gray, 127.

12 Cush. 56.

97 Mass. 521.

Distress and sale

to pay taxes;

except, &c.

R. S. 8, § 7.

1840, 186, § 1.

9 Met. 504.

11 Cush. 338.

7 Gray, 133.

Distress, how long kept, how advertised and sold.

R. S. 8, § 8.

1 Met. 323.

13 Met. 85.

11 Cush. 388.

Sale may be adjourned once.

R. S. 8, § 9.

Seizure of shares, how made.

1840, 186, § 2.

Sales of shares

seized, how made.

1840, 186, §§ 3, 4.

4 Cush. 10.

11 Cush. 388.

Surplus to be returned to owner.

R. S. 8, § 10.

5 Gray, 630.

After fourteen days, party may be imprisoned.

R. S. 8, § 11.

13 Met. 85.

2 Gray, 238.

7 Gray, 133.

9 Gray, 190.

13 Gray, 98.

3 Allen, 6.

Copy of warrant, &c., to be left with jailer.

R. S. 8, § 13.

Persons imprisoned for non-payment of taxes, how discharged.

1857, 141, § 24.

See Ch. 124.

See 1862, 188, § 9.

Collectors, when liable to pay, &c.

SECT. 6. If, in the assessors' lists or in their warrant and list committed to the collectors, there is an error in the name of a person taxed, the tax assessed to him may be collected of the person intended to be taxed, if he is taxable and can be identified by the assessors.

SECT. 7. If a person refuses or neglects to pay his tax, the collector shall levy the same by distress or seizure and sale of his goods, including any share or interest he may have as a stockholder in a corporation incorporated under authority of this commonwealth, and excepting the following goods:

The tools or implements necessary for his trade or occupation; beasts of the plough necessary for the cultivation of his improved lands; military arms, utensils for house-keeping necessary for upholding life, and bedding and apparel necessary for himself and family.

SECT. 8. The collector shall keep the goods distrained, at the expense of the owner, for four days at least, and shall, within seven days after the seizure, sell the same by public auction, for payment of the tax and charges of keeping and sale, having given notice of the sale by posting up a notification thereof in some public place in the city or town, forty-eight hours at least before the sale.

SECT. 9. The collector may once adjourn such sale for a time not exceeding three days: he shall forthwith give notice of such adjournment, by posting a notification at the place of sale.

SECT. 10. The seizure of a share or other interest in a corporation may be made by leaving with any officer of the corporation, with whom a copy of a writ may by law be left when the share of a stockholder is attached on mesne process, an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the tax which the stockholder is to pay, and that, upon his neglect or refusal to pay, the collector has seized such share or interest.

SECT. 11. The sale of such share or interest shall be made in the manner prescribed by law for the sale of goods by collectors of taxes in like cases, and also subject to the provisions of sections forty-six and forty-seven of chapter one hundred and thirty-three, respecting sales on executions.

SECT. 12. If the distress or seizure is sold for more than the tax and charges of keeping and sale, the collector shall return the surplus to the owner, upon demand, with an account in writing of the sale and charges.

SECT. 13. If a person refuses or neglects for fourteen days after demand to pay his tax, and the collector cannot find sufficient goods upon which it may be levied, he may take the body of such person and commit him to prison, there to remain until he pays the tax and charges of commitment and imprisonment, or is discharged by order of law.

SECT. 14. When the collector commits a person to prison, he shall give the keeper thereof an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the sum which such person is to pay as his tax, with the cost of taking and committing him, and that upon his having neglected payment for fourteen days, or otherwise, as the case may be, and for want of goods whereof to make distress, he has taken his body.

SECT. 15. When a person committed to prison for the non-payment of taxes is unable to pay the same, he shall be entitled to his discharge in like manner as persons committed on execution. The notice required in such case to be given to the creditor, may be given to either of the assessors or the collector by whom the party was committed. And the assessors and collector, or any of them, may appear and do all things which a creditor might do in case of arrest on execution.

SECT. 16. If such person is discharged, the collector shall be liable to pay the tax with the charges of imprisonment, unless he arrested and committed the party within one year after the tax was committed to

1134m. 40



him to collect, or unless he is exonerated therefrom by the city, town, or parish, to which the tax is due.

SECT. 17. A collector, when resisted or impeded in the exercise of his office, may require any suitable person to aid him therein, and if such person refuses to render such aid, he shall forfeit a sum not exceeding ten dollars.

SECT. 18. When a person, after the assessment of a tax upon him, removes out of the precinct of the collector without paying his tax, the collector may demand payment thereof wherever such person is found; and in default of payment the collector may forthwith proceed to collect the tax by making a distress, or by commitment of such person to the prison of the county where he is found; or the collector may issue his warrant to the sheriff of the county or his deputy, or to any constable of the place, where such person is found, directing them to distrain the property or take the body of such person, and to proceed therein in like manner as required of collectors in like cases.

SECT. 19. When a person taxed removes as aforesaid, or dies, or neglects to pay his tax for one year after it is committed to the collector, or being an unmarried woman, marries, before payment of the tax, the collector may, in his own name, maintain an action of contract therefor in like manner as for his own debt, and he may for that purpose in like manner have a process of foreign attachment against any trustee of such person.

SECT. 20. When a tax is assessed upon the personal estate of a deceased person, the collector may maintain an action of contract therefor in his own name, as for his own debt, against the executor or administrator; and if a tax is so assessed before the appointment of an executor or administrator, he may enforce it against the estate and its representative after such appointment, in like manner as if the assessment had been made subsequently thereto.

SECT. 21. When a person is taxed for real estate in his occupation, but of which he is not the owner, the collector, after demand of payment, may levy the tax by distress and sale of the cattle, sheep, horses, swine, or other stock or produce, of such estate, belonging to the owner thereof, which within nine months after such assessment is committed to him shall be found upon the premises, in the same manner as if such stock or produce were the property of the person so taxed; but such demand need not be made if the person on whom the tax is assessed resided within the precinct of the collector at the time of the assessment, and subsequently removes therefrom and remains absent three months.

SECT. 22. Taxes assessed on real estate shall constitute a lien thereon for two years after they are committed to the collector; and may with all incidental costs and expenses be levied by sale thereof, if the tax is not paid within fourteen days after a demand of payment made either upon the person taxed or upon any person occupying the estate; but the collector may sell real estate for taxes after two years have elapsed, unless the estate has been alienated in the mean time.

SECT. 23. Taxes reassessed on real estate shall constitute a lien thereon from the time they are committed to the collector, unless the estate has been alienated between the first and second assessments; and may be levied as provided in the preceding section.

SECT. 24. If a mortgagee of real estate, situated in the place of his residence, previously to the assessment of a tax, gives written notice to the clerk of such place that he holds a mortgage thereon, with a description of the estate, the collector before proceeding to sell it for non-payment of taxes shall demand payment of said taxes of the mortgagee, as provided in section twenty-two.

SECT. 25. If a mortgagee or non-resident owner of real estate, previously to the assessment of a tax, gives a written authority to some

R. S. 8, § 50.  
8 Met. 152.

Collectors may demand aid. Penalty. R. S. 8, § 6.

Persons removing from collector's precinct, without paying. R. S. 8, § 14. 1842, 84. 5 Allen, 568.

Remedy if persons remove, &c., without paying. R. S. 8, § 15. 1852, 312. 1859, 171. 6 Mass. 44. 23 Pick. 235. 8 Met. 393. 6 Allen, 568.

against executors and administrators. 1848, 235. 1852, 234. 1852, 312. 97 Mass. 321.

against persons who are not owners of the real estate taxed to them. R. S. 8, §§ 16, 17.

Taxes to be lien on real estate for two years, &c. R. S. 8, § 18. 1854, 239, § 1. 7 Pick. 15. 2 Gray, 185. 6 Allen, 571. 93 Mass. 81.

reassessed, to be a lien, unless, &c. 1859, 118, §§ 1, 2. 99 Mass. 32.

Resident mortgagee of real estate, when to be called upon for taxes. 1848, 166, § 1.

When non-resident appoints

attorney, demand how made.  
R. S. 8, § 20.  
1848, 186, § 2.

When made, collector to wait two months.  
R. S. 8, § 21.

Affidavit of collector, &c., evidence of demand on attorney.  
R. S. 8, § 22.

Sale of real estate, how advertised.  
R. S. 8, § 24.  
13 Gray, 77.

Contents of advertisement.  
R. S. 8, § 25.  
1848, 186, § 3.  
4 Cush. 286.  
7 Cush. 508.

Notices, how posted.  
R. S. 8, § 27.  
1848, 186, § 4.

When name of place has been changed.  
R. S. 8, § 26.

Affidavit of posting and publishing to be evidence, if recorded.  
R. S. 8, § 23.

Sale by auction of sufficient, &c.  
R. S. 8, §§ 28, 29.  
13 Gray, 77.  
See 1862, 183, §§ 1, 10.  
3 Allen, 686.

Collector may adjourn sale, &c.  
R. S. 8, § 30.  
See 1862, 183, § 1.

Deed to be given to purchaser, subject, &c.  
See 1862, 183, §§ 2, 6.  
6 Allen, 676.

inhabitant of the place as his attorney, to pay the taxes imposed on such estate, and the authority is filed with, or recorded by, the clerk of the place, the demand of payment shall be made upon such attorney before the estate is sold; otherwise, no demand need be made of payment of taxes assessed on the real estate of non-resident owners.

SECT. 26. When a demand is made upon the attorney under the preceding section, the collector shall not advertise the sale of the lands, until two months from the time of such demand.

SECT. 27. The affidavit of a disinterested person, or the collector, who makes a sale of land for the payment of taxes, taken before a justice of the peace and recorded by the clerk of the place where the land lies, before a sale is made, and stating the demand of payment of the tax, the person of whom, and the time and manner in which, it was made, shall be competent evidence of the demand.

SECT. 28. The collector shall give notice of the time and place of sale of real estate taken for taxes, by an advertisement thereof three weeks successively in some newspaper of the county where the real estate lies, if there is such newspaper, and if not, then in a newspaper printed in an adjacent county; the last publication to be at least one week before the time of sale.

SECT. 29. The advertisement shall contain a substantially accurate description of the several rights, lots, or divisions, of the estate to be sold, the amount of the tax assessed on each, the names of all owners known to the collector, and the taxes assessed on their respective lands.

SECT. 30. The collector shall, three weeks before the sale, post a notice similar to that required by the two preceding sections in some convenient and public place in his precinct, and a like notice on the premises by him advertised to be sold, if any part thereof is bounded by a street, lane, court, or highway.

SECT. 31. When real estate to be sold under the provisions of this chapter, is situated in a place the name of which has been changed by law within three years next preceding the sale, the collector shall in his advertisement and notices of the sale designate such place by its former and present name.

SECT. 32. The affidavit of a disinterested person, taken before a justice of the peace, of the posting and publishing notifications of the sale of real estate by a collector or other officer for payment of taxes, made upon one of the original advertisements, or a copy thereof, and filed and recorded in the registry of deeds of the county or district where the land lies, within six months after the sale, shall be competent evidence of such notice.

SECT. 33. If the taxes are not paid, the collector, at the time and place appointed for the sale, shall sell by public auction so much of the real estate, or the rents and profits of the whole estate for such term of time, as shall be sufficient to discharge the taxes and necessary intervening charges; or he may at his option sell the whole or any part of the land; and after satisfying the taxes and charges, he shall upon demand pay the residue of the proceeds of the sale, if any, to the owner of the estate.

SECT. 34. The collector may adjourn his sale from day to day not exceeding seven days in the whole; and he shall give notice of every such adjournment by a public declaration thereof, at the time and place previously appointed for the sale.

SECT. 35. The collector shall execute and deliver to the purchaser a deed of the real estate, or rents and profits sold; which deed shall state the cause of sale, the price for which the estate or rents and profits were sold, the name of the person on whom the demand for the tax was made, the places in the city or town where the notices were posted, the newspaper in which the advertisement of such sale was published, and

the place of residence of the grantee; and if the real estate has been sold, shall convey, subject to the right of redemption provided for in the following section, all the right and interest which the owner had therein at the time when the same was taken for his taxes. Such deed to be valid shall be recorded within thirty days from the day of sale.

When deed to be recorded.  
R. S. 8, § 81.  
1848, 166, § 6.  
2 Gray, 186.

SECT. 36. The owner of real estate sold for payment of taxes, or his heirs or assigns, may within two years from the day of sale, redeem the estates sold, by paying or tendering to the purchaser, or his heirs or assigns, the sum paid by him, with ten per cent. interest and all necessary intervening charges; and when the rents and profits are sold for payment of taxes, the same may be redeemed at any time within two years in the manner provided for the redemption of rents and profits taken on execution. And in the following cases real estate so sold may be redeemed, by any person having such title thereto that he might have recovered the same if no such sale had been made, at any time within two years after he has actual notice of the sale:—

Owner may redeem within two years, &c.  
R. S. 8, § 82.  
1860, 96, §§ 1, 2.  
See § 40.  
See 1862, 188.

First. When no person is named in the tax list as the owner or occupant of the premises, they being taxed as belonging to persons unknown;

Second. When the person who is named in said list is merely a tenant or occupant of the premises, and not the rightful owner thereof;

Third. When there is any error in the name of the person intended to be taxed;

Fourth. Mortgagees of record.

SECT. 37. If upon reasonable search the purchaser of real estate sold for non-payment of taxes cannot be found in the place of which he is described in the collector's deed as resident, the owner of the estate may redeem it as provided in the preceding section, on paying to the treasurer of the place in which it is situated, the amount which he would be required to pay to the purchaser; and the affidavit of any disinterested person of the making such search, taken before a justice of the peace and filed in the registry of deeds for the district or county in which the land is situated, within ninety days from the completion of the search, shall be competent evidence of the facts therein stated.

98 Mass. 44.  
how redeemed when purchaser cannot be found, &c.  
1848, 166, §§ 6, 8.

SECT. 38. Such treasurer shall receive the money and give to the person paying it a certificate of such payment, specifying the estate on which the tax was originally assessed. The certificate may be recorded in the registry of deeds, with a note of reference from such record to the collector's deed; and, when so recorded, shall have the effect to release and discharge all right and title acquired under the collector's deed. The treasurer shall hold all money received by him under the preceding section, for the use and benefit of the persons entitled thereto; and shall pay it over on reasonable demand.

Duty of treasurer.  
1848, 166, § 7.

SECT. 39. After proceedings have been commenced for the sale of real estate for a tax assessed thereon, and before the sale is made, the holder of any mortgage thereon may pay such tax with all intervening charges and expenses; and when the owner of real estate for three months after demand has neglected to pay such a tax, and the collector has made demand therefor upon a holder of a mortgage thereon, such holder may in like manner pay such tax, charges, and expenses.

Mortgagee may pay taxes on real estate in certain cases.  
1856, 239, §§ 1-3.  
See § 33.

SECT. 40. The holder of a mortgage, upon taking possession of real estate thereunder, shall be liable to pay all taxes due thereon and the expenses of any sale for taxes that has been commenced or taken place; to be recovered of him in an action of contract by the collector or, when a sale has taken place, by the purchaser; and upon tender by the mortgagee to the purchaser, within the time provided for owners of real estate to make tender in section thirty-six, of the sum paid by him, with ten per cent. interest and all necessary intervening charges, such purchaser shall at the expense of the mortgagee execute and deliver to

shall pay such taxes upon taking possession. Entitled to deed on tender.  
1856, 239, §§ 1-3.  
See § 33.  
5 Allen, 66.

him a valid deed of assignment of all interest acquired by virtue of the tax sale.

Mortgagee entitled to receipt for such taxes paid to collector. May tack same to mortgage.  
1856, 239, §§ 1-3.

SECT. 41. For all sums paid to a collector by the holder of a mortgage under either of the two preceding sections, the collector shall upon demand give him a receipt therefor, duly acknowledged; and such sums shall be added to and constitute part of the principal sum of the mortgage; and the mortgage shall not be redeemed, without the consent in writing of the holder, until such sums and interest thereon are paid; and such receipt recorded in the registry of deeds for the district or county where the land lies, within thirty days from its date, shall be notice to all persons of the payment of such sums and the lien upon the estate therefor.

SECT. 42. In all cases of sale of real estate for the payment of taxes assessed thereon, the supreme judicial court shall have equity powers, if relief is sought within five years from the sale.

SECT. 43. When the tax list and warrant of the assessors is committed to the sheriff, or his deputy, he shall forthwith post in some public place in the city or town assessed, an attested copy of said list and warrant; and shall make no distress for a tax, till after thirty days from the time of such posting.

SECT. 44. If a person pays his tax on such list within said thirty days, the officer shall receive for his fees five per cent. on the sum assessed; but if a tax remains unpaid after said thirty days, the officer shall proceed to collect the same by distress or imprisonment, in the manner collectors are required to proceed in like cases. The officer may also levy his fees for service and travel, in the collection of each person's tax, as in other cases of distress and commitment.

SECT. 45. When the city council of a city or the inhabitants of a town vote to appoint their treasurer a collector, he may issue his warrants to the sheriff of the county, or his deputy, or any of the constables of the city or town, returnable in thirty days, requiring them to collect any or all taxes due; and such warrants shall be in substance the same and confer like powers as warrants issued by assessors to collectors.

SECT. 46. Every collector shall once in two months, if required, exhibit to the mayor and aldermen or selectmen, and where there are no such officers, to the assessors, a true account of all moneys received on the taxes committed to him, and produce the treasurer's receipts for all money paid into the treasury by him.

SECT. 47. If a collector neglects so to exhibit his accounts, he shall forfeit the sum of two and a half per cent. on the sums committed to him for collection.

SECT. 48. The collector shall be credited with all sums abated according to law, and with the amount of taxes assessed upon any person committed to prison within one year from the receipt of the tax list by the collector, and before paying his tax, and also with any sums which the city or town may see fit to abate to him, due from persons committed after the expiration of a year.

SECT. 49. If the collector fails to collect a tax, without his own default, and there is a deficiency of the amount due on a state or county tax, such deficiency shall be supplied by him from the proceeds of the collection of city or town taxes, if any in his hands; and, if he have none, by the city or town treasurer, on the written requisition of the collector.

SECT. 50. If a collector of taxes neglects to pay, within the time required by law, such sums of money as ought by him to be paid to the state or county treasurer, the city or town by which such collector was appointed, shall be liable for such sums, to be recovered in an action of contract by such state or county treasurer respectively.

112 n. 186 S. J. Court to have equity powers.  
1856, 239, § 4.  
10 Met. 101.  
11 Gray, 410.  
98 Mass. 44.  
When tax list, &c., is committed to sheriff, &c.  
R. S. 8, § 34.

412-46. Sheriff's fees for collecting.  
R. S. 8, § 35.

When treasurers are made collectors, how to proceed.  
R. S. 8, § 38.  
R. S. 15, § 61.  
8 Allen, 330.

Collectors to exhibit accounts every two months if required.  
R. S. 8, § 45.

Penalty.  
R. S. 8, § 46.

Collectors to be credited with abatements, &c.  
R. S. 8, § 43.  
9 Met. 513.  
13 Gray, 324.

Deficiency in state or county tax, how supplied.  
R. S. 8, § 42.

Same, when collectors neglect to pay.  
R. S. 8, § 38.

SECT. 51. If a collector neglects seasonably to pay a state or county tax committed to him, whereby the city or town is compelled to pay the same, or neglects seasonably to account for and pay in a city or town tax committed to him, the city or town may recover the amount thereof, with all damages sustained through such neglect, and interest, by an action of contract, declaring on his official bond if any has been given.

B remedy for collector's neglect.  
R. S. 8, § 44.  
1852, 312.

SECT. 52. If a collector becomes insane, or in the judgment of the selectmen otherwise unable to discharge his duty, or absconds, removes, or in the judgment of the selectmen is about to remove, from the place, or refuses on demand to exhibit to the mayor and aldermen, or selectmen, or assessors, his accounts of collections, as herein provided, the selectmen may remove him from office and appoint another collector as in case of the death of the collector.

If collector becomes insane, &c., selectmen may remove him.  
R. S. 8, § 40.  
7 Gray, 120.

SECT. 53. If a collector dies before completing the collection of a tax committed to him, the selectmen may appoint some suitable person to complete the collection, who shall receive a reasonable compensation, to be paid by the town, and they may commit the same tax list to him, with their warrant, accordingly; and when a temporary collector is appointed by the selectmen, the assessors shall commit the tax list to him with their warrant, and he shall have the same powers and be subject to the same duties and liabilities as other collectors.

Tax list of deceased collector, how completed.  
Temporary collector.  
R. S. 8, § 39.  
1838, 43.  
1 Met. 524.  
4 Gray, 258.

112 H. 539

SECT. 54. In case of the death or removal from office of a collector, his executors or administrators, and all other persons, into whose hands any of his unsettled tax lists may come, shall forthwith deliver the same to the selectmen.

If collector dies, &c., list to be delivered to selectmen.  
R. S. 8, § 41.  
1 Met. 525.

SECT. 55. Collectors shall be paid such compensation for their services as their cities or towns shall determine.

Compensation of collectors.  
R. S. 8, § 47.

#### RECOVERY OF TAXES COLLECTED.

SECT. 56. No tax paid to a collector shall be recovered back, unless it appears that it was paid after an arrest of the person paying it, a levy upon his goods, a notice of sale of his real estate, or a protest by him in writing; and the damages awarded in a suit or process based upon any error or illegality in the assessment or apportionment of a tax, shall not be greater than the excess of the tax above the amount for which the plaintiff was liable to be taxed. And no sale, contract, or levy, shall be avoided by reason of any such error or irregularity.

Taxes paid to collector, when recovered back.  
1859, 118, §§ 3, 4.  
See Ch. 11, § 64.  
9 Gray, 88.  
18 Gray, 476.  
1 Allen, 319.  
10 Allen, 48.  
99 Mass. 208.  
102 Mass. 343.

## TITLE IV.

1874, 320

1873, 313

## CHAPTER 13.

[Repeal and substitute 1866, 219, taking place of 1864, 288, which first repealed this chapter.]

## OF THE MILITIA.

## SECTION

1. Persons to be enrolled.
2. List of to be prepared by assessors and given to town clerks; and returns to be made to adjutant-general, &c.
3. Penalty for not giving information to assessors.
4. Militia enrolled not liable to active duty, except, &c.
5. how drafted upon order of commander-in-chief.
6. Penalty upon soldiers for not answering summons when drafted.
7. Militia in active service, how organised, &c. To be furnished by state. Exception.
8. Towns to furnish and deposit ammunition.

## EXEMPTIONS.

9. Absolute exempts.
10. Exempts by producing certificates.
11. Enginememen, how exempted from duty.
12. Soldiers having bodily infirmity, how exempted from duty.

## VOLUNTEER MILITIA.

13. Active militia to consist of volunteers.
14. Number of companies, how apportioned and raised. Number of men.
15. Quota, how completed.
16. Term of duty.
17. Election of officers.
18. What constitutes a legal enlistment.
19. To be arranged into divisions, &c., and numbered.
20. Cavalry and artillery companies inconveniently situated.
21. Regiments, &c., of cavalry.
22. Companies attached to divisions, &c., but not to regiments.
23. Regimental and battalion bands.
24. Companies may be disbanded in certain cases.
25. in certain other cases.
26. Discharge of soldiers.

## OFFICERS, — APPOINTMENT, ELECTION, QUALIFICATION, AND DISCHARGE OF.

27. General staff officers, &c.
28. When office of quartermaster-general, major-general, &c., is vacant, &c.

## SECTION

29. Companies without officers, how commanded.
30. refusing or neglecting to elect, how commanded.
31. Officers of the line, election of.
32. Staff officers, appointment of.
33. Non-commissioned staff.
34. Duties of clerk, how performed when the office is vacant, or clerk absent, &c. Records, how kept — to be evidence.
35. Officers, how commissioned.
36. Persons ineligible to office, when elected, commander-in-chief to fill vacancy.
37. Rank of officers, how determined. Commission to express date of appointment.
38. Loss of commission, how supplied.
39. Major-general to be notified, &c.
40. to order elections of all commissioned officers.
41. Notice of elections. Penalty.
42. Presiding officer at elections.
43. Who to preside. Record and returns.
44. Who to be deemed elected; elections may be adjourned; not legal unless electors are notified. Roster and rolls to be produced.
45. When electors fail to elect. Returns of elections and refusals. New election ordered, unless, &c.
46. Elections in companies without officers.
47. Acceptance of an office shall vacate one previously held.
48. Commissions, how transmitted.
49. When persons refuse to accept, new election to be ordered.
50. Officers, &c., not to treat with intoxicating liquors.
51. Persons on duty privileged from arrest.
52. Oath of commissioned officers, — how administered and certified. Form of certificate.
53. Clerk's oath. Certificate.
54. Discharge of officers upon their own request.
55. Request for discharge between May and November not to be approved, unless, &c.
56. If officer refuse to approve, commander-in-chief may discharge.
57. Officers not to be discharged, except, &c.
58. Discharge by appointment in U. S. army. Penalty.
59. Staff commissions.
60. Officers under arrest.
61. Non-commissioned officer.

## ADJUTANT-GENERAL.

## SECTIONS

62. Adjutant-general.
63. to give bond.
64. salary of. Clerk, &c.
65. to distribute general orders, &c., and attend reviews.
66. to furnish blank rolls and returns, and blanks for company orders, &c.
67. to make abstracts of returns.
68. to make annual returns in duplicate.
69. to certify rolls, and transmit to towns.
70. to submit to auditor, roll of officers entitled to pay.
71. to submit account of expenditures.
72. to distribute arms, &c.
73. Field pieces to remain in possession of towns, &c.

## ARMS, EQUIPMENTS, EQUIPAGE, ETC.

74. What uniform to be provided.
75. Uniform, &c., exempt from attachment.
76. Camp equipage to be furnished to commanders of divisions, &c.
77. Colors to be furnished. Who responsible.
78. Arms and equipments to be furnished.
79. Commissioned officers responsible for equipments.
80. how relieved from responsibility, in case of discharge, &c.
81. Arms, &c., to be received from disbanded company.
82. Instruments of music furnished. Commander of brigade to draw order. Who responsible.
83. Cannon, ammunition, &c., to be furnished to artillery. When in state of war, &c., powder, &c., furnished. Who to be accountable.
84. When company ordered to march out of town, &c. Expenses of battery, how paid.
85. Scott's Tactics, &c., to be furnished to officers.
86. Military stores may be sold, &c.
87. Committee of legislature to visit arsenal and report.

## ARMORIES.

88. Armories, &c., to be provided by selectmen.
89. rent of, &c., to be certified by selectmen, &c.
90. Adjutant-general to audit, &c., claims for rent. Payment.
91. Penalty for false certificate.
92. Armories, &c., how examined.

## ORDERS AND NOTIFICATIONS.

93. Orders, by whom distributed.
94. When companies ordered out, how to be notified.
95. Notifications, requisites and times of. Verbal notice on parade. Notifications, how proved.
96. Company without officers, how notified. Penalty.
97. Orders, &c., to be recorded.

## DISCIPLINE, TRAININGS, INSPECTION, AND CAMP DUTY.

98. System of discipline, &c.
99. Commanders of regiments, &c., to order elementary drills. Penalty for non-attendance.

## SECTION

100. Encampments. Orders for, how issued. Place of.
101. Distance companies to march. Parade of bodies of troops larger than brigade.
102. Troops to be exercised, inspected, &c.
103. Company roll calls, how made.
104. Rank of corps. Senior officer to command.
105. Companies without officers, how commanded.
106. Brigade-majors to attend reviews, inspect arms, &c.
107. Officers and soldiers may drill in camp, &c.
108. Bounds of parade may be fixed. Punishment for intrusion.
109. Persons not holden to do duty on days of certain elections, except, &c. Liability of officers.
110. Commander-in-chief may order out militia for escort, &c. Music.
111. Voluntary parades not prohibited. Articles of agreement adopted by company binding. Remedy for breach thereof.
112. Penalty for deficiency in arms, &c.
113. Loaded arms not to be brought on parade, &c.
114. Contempt, disorderly conduct, &c., how punished.
115. Quitting guard, &c., how punished.
116. Soldiers may be put under guard. Non-commissioned officer may be reduced to ranks.
117. Penalties on soldiers in companies without officers.

## ROSTERS, ORDERLY BOOKS, ROLLS, AND RETURNS.

118. Rosters and orderly book, by whom kept.
119. Company rolls, how kept. To be revised and corrected.
120. Company orderly book, how kept. Delinquencies, fines, &c., to be recorded.
121. Commanders of companies to make duplicate returns in ten days. Returns of divisionary corps, &c., to whom made.
122. alphabetical pay rolls of companies within ten days after camp duty.
123. Penalty for neglect, or false return, &c.
124. Returns by master of regimental or battalion band.
125. Commanders of regiments, &c., to make returns of officers. Penalties.
126. Brigade-majors to make returns of brigade, and field and staff officers, &c. Penalty.
127. Commanders of brigade to make returns to commanders of division. Commanders of division to make returns to adjutant-general. Penalties.
128. Commanders of division to make out roll of officers. Penalty.

## CALLING OUT THE MILITIA IN CASE OF WAR, INVASION, INSURRECTION, TUMULT, OR RIOT.

129. Militia, how called out in case of invasion, &c. When commander of division may order out troops.
130. Drafts. Officers detailed.
131. If company without officers is called out, officer to be detailed.
132. Penalty on soldiers neglecting to appear, &c. Soldiers to take provisions.
133. Selectmen, &c., to provide carriages, &c., in certain cases. Penalty. Officer responsible.

## SECTION

184. Troops, how ordered out in case of riot, &c.  
Form of requisition, &c.  
185. Penalties for disobedience, &c.  
186. Troops to appear armed, &c.

## COMPENSATION.

187. Pay of general, field, and staff officers.  
188. Pay of inspectors, &c.  
189. of members of companies, and bands, how computed, disbursed, &c.  
140. forfeited for deficiency in returns. Not to be received unless full duty is performed, except, &c.  
141. Personal service requisite to compensation. Excuses not to entitle to.  
142. Inspector-general, expenses.  
143. Pay for travel in attending elementary drills. How paid.  
144. of detachment on special duty.  
145. for travel in attending elections.  
146. of members of courts martial, &c.  
147. Relief to soldiers or their families.  
148. Pay of troops in actual service, &c.  
149. Military accounts, &c., how examined, certified, and paid.

## EXCUSES.

150. Excuses to be made within twenty days, unless, &c. Clerks to be informed of excuses.  
151. Deficiencies in equipments.  
152. Certain conditional exemptions not to be excuses, unless, &c.

## PROSECUTION FOR FINES.

153. Fines of members of volunteer companies.  
154. Prosecution for fines — form of information — summons to be issued within nine months, giving seven days' notice — form of summons issued by a justice — form of summons by police court — defendant may plead not guilty — what shall be sufficient for complainant to prove — complainant to show certificate of appointment and qualification — to produce roll, and prove enlistment — to produce order to notify meeting — when order is required to be given by superior officer — offence to be proved — burden of proof — secondary evidence, when received — clerk, &c., may be witness — exemptions for infirmity, how proved — certificate of surgeon of regiment, evidence — commanding officer may be witness — execution, when issued — form of execution — amendments — continuance — when complainant is not liable for costs — appeals not allowed, except — complaints by other officer, how prosecuted.  
155. Imprisonment on execution.  
156. Money collected for fines, how disposed of.

## COURTS MARTIAL.

157. Complaints on which courts martial are ordered — trial must be within a year — by whom charges to be preferred.  
158. Respondent to be arrested — copy of charges, &c., to be delivered — court may adjourn.  
159. Courts martial, of whom to consist — when held — how often — general, by whom appointed, and to try whom — division, by whom appointed, and to try whom — members of, how and by whom detailed — provision in case any officer detailed is unable to serve — no one superior in rank to the president, to be detailed — officers ordered to detail, to make return —

## SECTION

- judge-advocate to attend — when unable to attend — if president does not attend — if sufficient number of members do not attend, or are not qualified — if judge-advocate or marshal is absent — person acting as judge-advocate, to continue during trial — rank of officers — court may adjourn, when.  
160. Members to be sworn — oath of president and members — oath of judge-advocate — challenges, how and when made, and by whom tried — certain causes of challenge, when waived — if accused is absent, or withdraws — witnesses summoned, must appear — penalty — oath of witnesses — evidence of default in returns — copies of documents, &c., how authenticated — all proceedings and evidence to be in writing — votes, how taken — two-thirds required to convict — sentence — courts martial authorised to preserve order — records, how authenticated and transmitted — approval or disapproval of sentence — pay roll — copies to be furnished — judgment of disqualification may be reversed.  
161. What offences may be tried by court martial.  
162. Fines imposed by court martial. How prosecuted. Costs against judge-advocate, how paid.

## BOARDS OF OFFICERS.

163. Boards to settle military questions.

## GENERAL AND DIVISION COURTS OF INQUIRY.

164. Courts of inquiry, how ordered, &c. — vacancies — oath of president and members — oath of judge-advocate — witnesses — judge-advocate to attend courts of inquiry.  
165. No guard, unless.

## RULES AND ARTICLES FOR GOVERNING THE MILITIA IN ACTUAL SERVICE.

166. Who shall be taken to be soldiers.  
167. Offences punished by death or otherwise.  
*Art. i.* Sedition.  
ii. Not suppressing sedition, nor giving information of it.  
iii. Desertion.  
iv. Advising desertion.  
v. Misbehaving before an enemy, &c.  
vi. Abandoning post, &c.  
vii. Making known or falsifying watch-word.  
viii. Forcing safeguard.  
ix. Harboring or relieving an enemy.  
x. Corresponding with an enemy.  
xi. Compelling commander to surrender.  
xii. Sentence of death.  
168. Offences punished by cashiering, &c.  
*Art. xiii.* Using traitorous words.  
xiv. Neglecting to march, &c.  
xv. Disobedience of orders, &c.  
xvi. Provocation to fight a duel.  
xvii. Giving or accepting challenge.  
xviii. Upbraiding, &c.  
xix. Suffering person to pass guard to fight a duel — not arresting persons about to fight.  
xx. Drunkenness on duty.  
xxi. Escaping from arrest.  
xxii. Behaving scandalously.  
xxiii. Embesking, or committing fraud.  
xxiv. Selling or wasting stores.  
xxv. Not delivering offender to civil authority.



## SECTION

169. Offences punished at discretion of court martial.

Art. xvi. Preceding offenses when committed by soldiers.

xxvii. Disrespect to commanding officer.

xxviii. Disobedience.

xxix. Violence to an officer.

xxx. Resisting an officer who attempts to quell a quarrel.

xxxi. Not keeping order, redressing abuses, protecting citizens.

xxxii. Being one mile from camp, &c.

xxxiii. Being absent without leave.

xxxiv. Not retiring to quarters.

xxxv. Not repairing to rendezvous, unless, &c.

xxxvi. Sentinel sleeping, &c.

xxxvii. Occasioning false alarms.

xxxviii. Leaving platoon, &c.

xxxix. Violence to persons bringing provisions.

xl. Disturbing courts martial.

xli. Refusing to receive prisoner.

xlii. Releasing prisoner.

xliii. Not reporting prisoners.

xliv. Crimes not capital, and not specified.

xlv. Officers absent from divine service, &c.

170. Fines.

Art. xvi. Soldiers absent, &c., during divine service.

xviii. Profanity by officers.

xviii. Profanity by soldiers.

xlix. Fines by court martial.

1. Fines stopped out of pay.

171. General rules.

Art. II. Officer wronged by colonel.

III. Officer or soldier wronged by captain.

III. Public stores secured.

## SECTION

General rules.

liv. Oldest officer to command, without regard to corps.

lv. Offenders against citizens to be delivered to civil authority.

lvi. Property of deceased persons secured.

lvii. Pay and rations.

172. Courts martial in actual service, &c.

Art. lviii. Arrests.

lix. Imprisonment before trial.

lx. General and division courts martial, by whom ordered.

lxi. Of whom general court martial shall consist.

lxii. Division and regimental courts martial.

lxiii. Power of regimental courts martial.

lxiv. Post and detachment courts martial.

lxv. Courts martial in particular corps.

lxvi. Rank of members.

lxvii. Time of holding court martial.

lxviii. Rank in court martial.

lxix. Judge-advocate.

lxx. Oath of president and members—oath of judge-advocate.

lxxi. Witnesses refusing to appear and testify.

lxxii. Oath of witnesses.

lxxiii. Votes in court martial, two-thirds necessary to capital sentence.

lxxiv. Proceedings to be transmitted to commanding officer.

lxxv. Pay may be suspended.

lxxvi. Pardon and mitigation of punishment.

173. Construction of the words "soldier" and "battalion."

174. Penalty on civil officers.

175. "Selectmen" to include "mayor and aldermen."

SECTION 1. (R.) [Every able-bodied white male citizen, resident within this state, of the age of eighteen years, and under the age of forty-five years, excepting persons enlisted into volunteer companies, persons exempted by the following sections, idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrolment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him.]

SECT. 2. (R.) [Assessors shall annually in May or June make a list of persons living within their respective limits liable to enrolment, and place a certified copy thereof in the hands of the clerks of their respective places, who shall record it in the records of their city or town, and annually in May, June or July transmit returns of the militia thus enrolled to the adjutant-general.]

SECT. 3. (R.) [Keepers of taverns or boarding-houses, and masters and mistresses of dwelling-houses, shall, upon application of the assessors within whose bounds their houses are situated, or of persons acting under them, give information of the names of persons residing in their houses liable to enrolment or to do military duty: and every such person shall, upon like application, give his name and age; and if such keeper, master, mistress, or person, refuses to give such information, or gives false information, such keeper, master, or mistress shall forfeit and pay twenty dollars, and such person shall forfeit and pay twelve dollars, to be recovered on complaint of either of the assessors.]

Persons to be enrolled.  
R. S. 12, §§ 5-10.  
1840, 92, § 1.  
1841, 106, § 7.  
U. S. Statutes,  
1792, 33.  
1 Pick. 194.  
8 Pick. 262, 506.  
15 Pick. 7.  
21 Pick. 380.  
22 Pick. 571.  
23 Pick. 54.

Assessors to prepare list of, &c., and clerks to make returns, &c.  
1840, 92, §§ 3, 4.  
1842, 98, § 1.

Penalty for not giving information to assessors.  
1840, 92, § 2.  
10 Mass. 36.

Militia enrolled  
not liable to ac-  
tive duty, except,  
&c.  
R. S. 12, § 184.  
1840, 92, §§ 5, 11.

how drafted  
upon order of  
commander-in-  
chief.  
1840, 92, § 8.

Penalty upon  
soldiers for not  
answering sum-  
mons when  
drafted.  
1840, 92, § 9.

Militia in active  
service, how or-  
ganised, &c. To  
be furnished by  
state. Exception.  
R. S. 12, §§ 11,  
38, 129.  
1886, 4, § 2.  
1840, 92, §§ 5-7.  
11 Mass. 386.  
16 Mass. 623.  
4 Pick. 26.

Towns to furnish  
and deposit  
ammunition.  
R. S. 12, § 108.  
1887, 240, § 10.

SECT. 4. (R.) [The enrolled militia shall be subject to no active duty except in case of war, invasion, the prevention of invasion, the suppression of riots, and to aid civil officers in the execution of the laws of the commonwealth; in which cases the commander-in-chief shall order out for actual service, by draft or otherwise, as many of the militia as necessity demands.]

SECT. 5. (R.) [The order of the commander-in-chief may be directed to the mayor and aldermen of cities or to the selectmen of towns, who shall thereupon appoint a time and place of parade for the militia, in their city or town, and order them to appear at the time and place, either by leaving a written notice, or orally, and then and there proceed to draft as many thereof, or accept as many volunteers, as is required by the order of the commander-in-chief; and shall forthwith notify the commander-in-chief that they have performed such duty.]

SECT. 6. (R.) [Every soldier ordered out, or who volunteers, or is detached, or drafted, who does not appear at the time and place designated by the mayor and aldermen, or selectmen, or who has not some able-bodied and proper substitute, at such time and place, or does not pay to such mayor and aldermen, or selectmen, for the use of the commonwealth, the sum of seventy-five dollars, within twenty-four hours from such time, shall be taken to be a soldier absent without leave, and dealt with accordingly.]

SECT. 7. (R.) [When the militia are ordered out or have volunteered for and while they are in actual service, as specified in section four, they shall be organized by the commander-in-chief with the advice of the council, into companies, battalions, regiments, brigades, and divisions, [which companies, battalions, regiments, brigades, and divisions,] shall be numbered and record thereof made in the office of the adjutant-general; and shall be officered, governed, and trained, according to the laws of this state and the United States; and the state shall furnish arms and equipments for each non-commissioned officer and private, and pay them until their term of service expires; and when troops are in the field for such purposes, the senior officer of the troops present shall command until the commander-in-chief or some officer detailed by him takes command. Each commissioned officer shall provide himself with a sword or hanger.]

SECT. 8. (R.) [When the commander-in-chief deems it necessary, he shall require cities and towns to provide, in some suitable place therein, sixty-four pounds of powder, one hundred pounds of musket and rifle balls, and also three copper, iron, or tin camp kettles for every sixty-four soldiers enrolled in said town, and the same proportion for a greater or less number, and to keep the same until such requirement is revoked. Every place neglecting to comply with such requisition shall forfeit and pay not less than twenty nor more than five hundred dollars.]

#### EXEMPTIONS.

SECT. 9. (R.) [In addition to the following persons, absolutely exempted from enrolment in the militia by the laws of the United States, viz: —

The vice-president of the United States;

The officers, judicial and executive, of the government of the United States;

The members of both houses of congress and their respective officers; custom house officers and their clerks; inspectors of exports; pilots, and mariners employed in the sea-service of a citizen or merchant within the United States;

Postmasters, assistant-postmasters, and their clerks, post officers, post riders, and stage drivers, in the care and conveyance of the mail of the United States; ferrymen employed at any ferry on the post road; the

Absolute ex-  
empts.  
R. S. 12, § 1.  
1888, 188.  
1840, 92, § 1.  
1855, 449.  
1868, 93, § 2.  
1869, 196.  
U. S. Statutes,  
1800, 46, § 4.  
1810, 37, § 33.  
1886, 270, § 84.  
4 Mass. 239.  
13 Mass. 316.  
14 Mass. 394.  
17 Mass. 49.  
1 Pick. 261.  
2 Pick. 597.  
23 Pick. 208.

artificers and workmen in the United States armory at Springfield and the arsenal at Watertown;

The persons hereinafter mentioned, shall also be absolutely exempted from enrolment, viz.:—

Justices of courts of record; judges and registers of probate and insolvency; registers of deeds and sheriffs;

Officers who have held or may hold, for a period of five years, commissions in the army or navy of the United States;

Officers who have held, for a period of five years, commissions in the militia of this or any other state of the United States; or who have been superseded and discharged; or who held commissions in any corps at the time of its disbandment;

Staff officers heretofore exempted, and whose offices shall become vacant by the provisions of section fifty-nine;

Ministers of the gospel;

The superintendents, officers, and assistants, employed in or about either of the state hospitals, state almshouses, state prison, jails, or houses of correction; keepers of light-houses, and conductors and engine drivers of railroad trains.]

SECT. 10. (R.) [Every person of either of the religious denominations of quakers or shakers, who, on or before the first Tuesday in May, annually, produces to the assessors of the city or town in which he resides, a certificate, signed by two or more of the elders or overseers, (as the case may be,) and countersigned by the clerk, of the society with which he meets for public religious worship, shall be exempted from enrolment. The certificate shall be in form as follows:—

We, the subscribers, of the society of people called ———, in the town of ———, in the county of ——— do hereby certify that ——— is a member of our society, and that he frequently and usually attends religious worship with said society, and we believe he is conscientiously scrupulous of bearing arms.

A. B. } Elders or overseers,  
C. D. } (as the case may be.)

E. F., Clerk.]

SECT. 11. (R.) [Enginemen, or members of the fire department in a city or town, shall be exempted from military duty by forthwith filing with the assessors of the city or town in which they reside, a certificate that they are enginemen or members of the fire department as aforesaid, signed by the mayor and aldermen of such city, or the selectmen of such town; but when a member of a volunteer company is, after his enlistment, appointed an engineman or member of the fire department, it shall not vacate his enlistment, but during its continuance shall exempt him from duty.]

SECT. 12. (R.) [Every non-commissioned officer or private having bodily infirmity, may be exempted from military duty, if he obtains from the surgeon or surgeon's mate of the regiment, battalion, or detached company, to which he belongs, (or, if there are no such officers commissioned in such regiment, battalion, or company, then from some respectable physician living within the bounds of the same,) a certificate that he is unable to do military duty, on account of bodily infirmity, the nature of which shall be described in such certificate; and the captain or commanding officer of his company may, on the back of the certificate, discharge the non-commissioned officer or private named therein, from performing military duty, for a term of time which he judges reasonable, not exceeding one year; which certificate, when countersigned by the colonel or commanding officer of said regiment, battalion, or company, shall for the time specified exempt him from military duty, except attendance at the election of officers. If such non-commissioned officer or private, having obtained such certificate, is refused a discharge, he may apply to the commanding officer of the brigade, who may discharge him from military duty for such time, not exceed-

Absolute ex-  
empts.

Exempts by pro-  
ducing  
certificates.  
R. S. 12, § 2.  
1840, 92, §§ 1, 2.  
1841, 106, § 7.  
12 Mass. 441.  
17 Mass. 851.  
See § 152.

Enginemen, how  
exempted from  
duty.  
R. S. 12, § 2.  
R. S. 18, § 17.  
14 Mass. 374.  
8 Pick. 226.  
See § 152.

Soldiers having  
bodily infirmity,  
how exempted  
from duty  
R. S. 12, § 2.  
1 Mass. 81.  
9 Mass. 322.  
11 Mass. 456,  
540.  
14 Mass. 290.  
8 Pick. 383.  
7 Pick. 251.  
See § 152.

ing one year, as he judges reasonable, by indorsing the same upon the surgeon's certificate.]

## VOLUNTEER MILITIA.

Active militia to consist of volunteers.  
1840, 92, § 11.

Number of companies, how apportioned and raised. Number of men.  
R. S. 12, § 21.  
1840, 92, §§ 12, 13, 18.  
1843, 84, § 4.  
1852, 104, § 5.  
1853, 174, §§ 6, 7.  
1858, 166, §§ 4, 6, 6.  
See § 122.  
1861, 49, 148.  
1862, 111.  
11 Allen, 88.

Quota, how computed.  
1840, 92, § 80.  
1843, 84, § 3.

Term of duty five years.  
1840, 92, § 17.  
4 Mass. 566.  
8 Mass. 274.  
11 Mass. 239.  
13 Mass. 491.  
8 Pick. 226, 264.  
6 Pick. 431.  
11 Pick. 266.  
Election of officers.  
1840, 92, § 19.  
1858, 166, § 4.

What constitutes a legal enlistment.  
8 Allen, 480.

Militia to be arranged into divisions, &c., and numbered.  
R. S. 12, § 11.  
1836, 4, § 2.  
1840, 92, § 16.  
11 Mass. 382.  
10 Mass. 523.  
4 Pick. 25.

Cavalry and artillery companies, inconveniently situated.  
1840, 92, § 16.  
1854, 11, § 1.  
See § 27.

Regiments, &c., of cavalry.  
R. S. 12, § 14.  
Companies attached to divisions.

SECT. 13. (R.) [The active militia shall be composed of volunteers; and in case of war, invasion, the prevention of invasion, the suppression of riots, and to aid civil officers in the execution of the laws of the commonwealth, shall first be ordered into service.]

SECT. 14. (R.) [The number of [*such*] companies shall not exceed one hundred and twenty, and shall be apportioned among the counties according to population, but retaining the volunteer companies with their officers now organized. Petitions for organizing companies of foot artillery may be granted by the commander-in-chief with advice of the council, for organizing other companies, by the commander-in-chief or by the mayor and aldermen or selectmen by his permission. Companies of cavalry shall be limited to eighty privates and a saddler and farrier; companies of foot artillery, to forty-eight cannoneers, twenty-four drivers, and a saddler and farrier; the cadet companies of the first and second divisions, to one hundred, and companies of infantry and riflemen to fifty, privates. No new company shall be organized if thereby the whole force will exceed five thousand officers and men.]

SECT. 15. (R.) [When a county does not raise its quota, the commander-in-chief may grant petitions to complete the prescribed number in other counties.]

SECT. 16. (R.) [Non-commissioned officers and soldiers of volunteer companies shall do duty therein for five years, unless disability after enlistment incapacitates them to perform such duty, or they are regularly discharged by the proper officer.]

SECT. 17. (R.) [No election of officers shall be ordered in a company hereafter organized unless at least fifty men have been enlisted therein. Upon the enlistment of that number, and notification given to the commander-in-chief by one or more of the petitioners for the company, attested by the mayor and aldermen or selectmen, an election of officers may be ordered; and if there is no officer of the volunteer militia conveniently located to preside at such election, the commander-in-chief may issue an order for that purpose, to one or more of the selectmen or mayor and aldermen of the place where a majority of the petitioners reside.]

SECT. 18. (R.) [After the organization of a company, recruits shall sign their names in a book of enlistment kept by the company for the purpose, which signing shall be a legal enlistment.]

SECT. 19. (R.) [The commander-in-chief may arrange the volunteer militia, when they exist in sufficient numbers and are conveniently located, into divisions, brigades, regiments, battalions, and companies, conformably to the laws of the United States, and make such alterations as from time to time may be necessary. Each division, brigade, regiment, battalion, and company, shall be numbered at the formation thereof, and a record thereof made in the office of the adjutant-general.]

SECT. 20. (R.) [Companies of cavalry and foot artillery inconveniently located for such organization may be attached to such brigades as the commander-in-chief shall order. Other companies inconveniently situated shall remain under their commanders, subject to the orders of the commander-in-chief through the commander of the nearest regiment; to whom such commanders shall make their annual returns.]

SECT. 21. (R.) [Squadrons of cavalry shall consist of two, and regiments, of not less than four, companies.]

SECT. 22. (R.) [Companies attached to divisions or brigades, and not to regiments, shall until otherwise organized be subject to the immediate

orders of the commanders of such divisions or brigades; who shall receive the returns and orders, have the authority, and perform the duties, with regard to such companies, which are prescribed for the commanders of regiments and battalions with regard to their companies.]

SECT. 23. (R.) [The commander of a regiment or battalion may raise by voluntary enlistment, and warrant and organize, within the limits of his command, to be under his direction and command at encampments, a band of musicians, not to exceed including a master and deputy-master, eighteen for a regiment and eight for a battalion. The master, and in his absence the deputy-master, shall teach and command the band and issue all orders directed by such commander. Each member of the band shall keep himself provided with such uniform as may be directed by the commander-in-chief, and such instrument as the commander of his regiment or battalion prescribes, under penalty for each neglect, or deficiency, or for misconduct, of dismissal from the band by such commander, and of not less than ten nor more than twenty dollars, to be recovered on complaint by the brigade-major.]

SECT. 24. (R.) [If it appears to the commander-in-chief, on representation of the commanding officer of a division or brigade, that a company of militia has failed to comply with the requisitions of the law in matters of uniform, equipment, and discipline, so that it is incapacitated to discharge the duties required of it, such company may be disbanded by the commander-in-chief.]

SECT. 25. (R.) [If a company is destitute of commissioned officers, and, having been twice ordered to fill vacancies, neglects or refuses to fill them, or is reduced to a less number than thirty-two privates and so remains for six consecutive months, or when such company appears from a return made to the adjutant-general to be reduced below thirty-two privates, present and doing duty at the time for which such return is made, such company may be forthwith disbanded by the commander-in-chief.]

SECT. 26. (R.) [The commander of a regiment or battalion may, upon the written application of the commander of a company in his regiment or battalion, accompanied by a request in writing signed by a non-commissioned officer or private, discharge such officer or private from the company; and the commander of a company unattached may, upon application in writing signed by a member thereof, discharge such member; and commanding officers of regiments, battalions, or detached companies, may discharge non-commissioned officers or privates upon the request by vote of a majority of the active members of the company.]

ions, &c., but  
not to regiments.  
R. S. 12, § 15.

Regimental and  
battalion bands.  
1846, 218, § 7.  
1849, 218, § 4.  
1852, 104, § 7.  
1872, 110.

Companies may  
be disbanded in  
certain cases.  
1845, 243, § 9.

in certain  
other cases.  
R. S. 12, §§ 16,  
59.  
1836, 4, § 2.  
1868, 166, § 3.

Discharge of  
soldiers.  
1864, 367, § 6.

#### OFFICERS — APPOINTMENT, ELECTION, QUALIFICATION, AND DISCHARGE OF.

SECT. 27. (R.) [The officers and non-commissioned officers of the militia shall be as follows:—

A commander-in-chief.

An adjutant-general, who shall be the inspector-general of the militia, and a quartermaster-general, each with the rank of brigadier-general.

Aids to the commander-in-chief with the rank of lieutenant-colonel, not exceeding four in number.

To each division there shall be one major-general, one division-inspector with the rank of lieutenant-colonel, two aids-de-camp, one division-quartermaster, one division-engineer, and one judge advocate, each with the rank of major.

To each brigade there shall be one brigadier-general, one brigade-inspector with the rank of major, to serve also as brigade-major, one brigade-quartermaster, one brigade-engineer, and one aid-de-camp, each with the rank of captain.

General staff officers.  
R. S. 12, §§ 22, 28.  
1840, 92, § 18.  
1846, 218, §§ 10,  
12.  
1853, 174, § 4.  
1854, 11, § 2.  
1858, 106, § 5.  
1862, 111.  
1863, 167.  
Resolves, 1854,  
39, §§ 1, 2.  
9 Pick. 41.  
11 Pick. 235.  
16 Pick. 84.  
See § 122.  
Division officers.

Brigade officers.

**Regimental officers.**

To each regiment there shall be, one colonel, one lieutenant-colonel, and one major; one adjutant, one quartermaster, and one paymaster, each with the rank of lieutenant; one surgeon, one surgeon's mate, one chaplain, one sergeant-major, one sergeant-quartermaster, one drum-major, and one fife-major.

**Battalion officers.**

To each separate battalion there shall be one major; one adjutant, and one quartermaster, each with the rank of lieutenant; one surgeon, one sergeant-major, and one quartermaster-sergeant.

**Company officers.**

To each company of infantry, and riflemen, there shall be one captain, one first, one second, one third, and one fourth lieutenant; four sergeants, four corporals, and two musicians.

To each company of foot artillery attached to a brigade and organized as designated by the war department of the United States, the sixth day of March, eighteen hundred and forty-five, there shall be one major, to be elected in the manner provided for captains and subalterns, four lieutenants, six chiefs of pieces, six gunners, and two musicians.

To each company of cavalry there shall be one captain, one first, one second, one third, and one fourth lieutenant, four sergeants, four corporals, one saddler, one farrier, and two trumpeters.

To every company there shall be one clerk, who shall be one of the sergeants.

To the company of cadets of the first division, one captain with the rank of lieutenant-colonel, one lieutenant and one ensign, each with the rank of major, one adjutant with the rank of captain, and one quartermaster with the rank of first lieutenant.

To the company of cadets of the second division, one major, to be elected as provided for captains and subalterns, one captain, one first lieutenant, one second lieutenant, one ensign, one adjutant, and one quartermaster.

To each of said companies of cadets, one surgeon, five sergeants, four corporals, and four musicians; and there may be to each of said companies such number of company officers of a rank, in the company of the first division, not above first lieutenant, in the company of the second division, not above fourth lieutenant; and of sergeants, corporals, and musicians, as the commander-in-chief may from time to time deem expedient for instruction in the school of the battalion.

Companies of cavalry and artillery attached to brigades, as mentioned in section twenty, shall be entitled to an adjutant with the rank of lieutenant, and one surgeon, to be appointed by the commanding officers of said companies respectively, and commissioned by the commander-in-chief, and to hold their commissions, as other staff officers now do, or until the companies to which they are attached are organized into battalions or regiments of the same arm; and [an] adjutant so appointed and commissioned shall receive the same compensation as is allowed to other officers and soldiers of such companies. And a company of foot artillery attached to a brigade shall be entitled to a quartermaster with the rank of lieutenant, to be appointed by the commanding officer of the company, and commissioned by the commander-in-chief.]

When office of quartermaster-general, major-general, &c., is vacant, &c.  
R. S. 12, § 23.

SECT. 28. (R.) [When the office of quartermaster-general is vacant, the duties thereof shall be performed by the adjutant-general; and when the office of major-general, brigadier-general, colonel, major, or captain, is vacant, or such officer is sick or absent, the officer next in rank shall command the division, brigade, regiment, battalion, or company, until the vacancy is supplied.]

Companies without officers, how commanded.  
R. S. 12, § 24.

SECT. 29. (R.) [When a company has neither commissioned nor non-commissioned officers, the commander of the regiment or battalion to which it belongs, shall appoint suitable persons within said company to be non-commissioned officers thereof; and shall appoint one of the non-commissioned officers to be clerk, indorse the appointment on his

warrant, administer the oath to him, and certify the same, as required by section fifty-three. The senior non-commissioned officer of a company without commissioned officers, shall command the same, except upon parade, and as provided in the following section.]

SECT. 30. (R.) [When a company is first enrolled, or from any cause is without officers, and an election of officers is ordered, if such company neglects or refuses to elect any officer, or if the persons elected shall not accept, the commander of the regiment or battalion to which it belongs, shall detail some officer of the staff or line of the regiment to train and discipline said company, until some officer is elected or appointed by the commander-in-chief. Such officer shall have the same power, and be subject to the same liabilities, as if he were captain of such company; shall keep the records of the company, and prosecute for all fines and forfeitures, in like manner as a clerk might do, under section one hundred and fifty-four; and all meetings of such company shall be notified as provided in section ninety-six.]

SECT. 31. (R.) [The officers of the line of the militia shall be elected as follows:

Major-generals, by the senate and house of representatives, each having a negative upon the other.

Brigadier-generals, by the written votes of the field officers of the respective brigades and commanders of brigade companies.

Field officers of regiments and battalions, by the written votes of the captains and subalterns of the companies of the respective regiments or battalions.

Captains and subalterns of companies by the written votes of the non-commissioned officers and privates of the respective companies.]

SECT. 32. (R.) [The staff officers of the militia shall be appointed in manner following:

The adjutant-general, by the commander-in-chief.

The quartermaster-general, by the commander-in-chief by the advice and consent of the council.

The aids to the commander-in-chief, by the commander-in-chief.

The division-inspectors and division-quartermasters, by the respective major-generals, and approved by the commander-in-chief.

The aids-de-camp of major-generals and division-engineers, by the respective major-generals.

The judge advocates, by the respective major-generals, and approved by the commander-in-chief.

The brigade-majors and inspectors, brigade-quartermasters, brigade-engineers, and aids-de-camp to brigadier-generals, by the respective brigadier-generals.

Adjutants, paymasters, quartermasters, chaplains, surgeons, and surgeons' mates, of regiments, by the respective colonels.

Adjutants, quartermasters, and surgeons, of battalions, by the respective majors.

The staff officers of the cadet companies shall be elected like company officers.]

SECT. 33. (R.) [The non-commissioned officers in the militia shall be appointed in manner following:

Sergeant-majors, quartermaster-sergeants, drum-majors, and fife-majors, of regiments, by the colonel of the regiment.

Sergeant-majors, and quartermaster-sergeants, of battalions, by the major.

Non-commissioned officers of companies, by the respective captains, who shall forthwith return the same in writing to the commanding officer of the regiment or battalion.

Clerks, by the commanding officers of the respective companies.]

SECT. 34. (R.) [When the office of clerk of a company is vacant, and

Companies refusing or neglecting to elect, how commanded.  
R. S. 12, § 25.  
23 Pick. 208, 214.  
24 Pick. 172.  
See §§ 96, 150.

Officers of the line, election of.  
R. S. 12, § 48.

See Const. ch. 1,  
§ 1, art. 10.

Staff officers, appointment of.  
R. S. 12, § 49.  
1837, 240, § 2.  
1853, 174, § 4.  
Resolves, 1864,  
39.

Non-commissioned officers, appointment of.  
R. S. 12, § 50.  
3 Pick. 444.  
5 Pick. 239.  
16 Pick. 84.  
24 Pick. 172.

Clerks.  
Duties of clerk,

how performed when the office is vacant or the clerk absent, &c. Records, how kept—to be evidence.  
R. S. 12, §§ 28, 100.

Officers, how commissioned.  
R. S. 12, § 51.

Persons ineligible to office—when elected, commander-in-chief to fill vacancy.  
R. S. 12, § 52.  
1884, 15.

Rank of officers, how determined. Commission to express date of appointment.  
R. S. 12, § 53.

Loss of commission, how supplied.  
R. S. 12, § 54.

Major-general to be notified.  
R. S. 12, § 55.

to order elections of all commissioned officers.  
R. S. 12, § 56.  
1854, 367, § 9.

Notice of elections. Penalty.

it appears to the commander of the company that there is satisfactory evidence that no person will accept the same, he may issue his written order to a non-commissioned officer or private in the company, requiring him to perform all the duties of clerk except keeping the records, for a term not exceeding three months; in case of the absence, sickness, or inability, of the clerk, the commander of the company may appoint a clerk pro tempore; or, upon satisfactory evidence that no one in the company will accept the office pro tempore, may order any non-commissioned officer or private to perform the duties of clerk until the clerk is able to perform the same, or another is appointed; and any non-commissioned officer or private refusing or neglecting to perform such duty when so ordered, shall forfeit to the use of the company not less than ten nor more than twenty dollars, to be recovered on complaint by the commander of the company. In such cases the records of the company shall be kept by the commander thereof as long as such vacancy, absence, sickness, or inability, continues, and records so kept shall be competent evidence of such orders and temporary appointments, as well as of matters of which they would be evidence if kept by the clerk.]

SECT. 35. (R.) [All commissioned officers shall be commissioned by the commander-in-chief, according to the respective offices and grades to which they may be elected or appointed.

Every non-commissioned officer's warrant shall be given and signed by the commanding officer of his regiment or battalion.

Clerks shall have their appointments certified on the back of their warrants by the commanding officers of their respective companies.]

SECT. 36. (R.) [No idiot, lunatic, common drunkard, vagabond, pauper, nor person convicted of an infamous crime, nor any other than white, able-bodied, male citizens shall be eligible to any military office. When it appears to the commander-in-chief, that a person thus ineligible has received a majority of the votes cast at an election of officers, he shall not commission him, but, with the advice and consent of the council, shall declare such election null and void, and appoint some person to fill the vacancy.]

SECT. 37. (R.) [Commissioned officers shall take rank according to the date of their commissions. When two of the same grade bear an even date, the rank shall be determined by lot drawn before the commander of the division, brigade, regiment, battalion, company, or detachment, or president of a court martial, as the case may be.

The day of the appointment or election of an officer shall be expressed in his commission, and considered as the date thereof. When he is transferred to another corps or station of the same grade, the date of the original appointment shall be expressed and considered the date of his commission.]

SECT. 38. (R.) [When an officer loses his commission, upon affidavit made before a judge or justice of a court of record and produced to the adjutant-general, a duplicate commission shall issue of the same tenor and date.]

SECT. 39. (R.) [Major-generals shall be notified of their elections by the secretary of the commonwealth, and, unless within thirty days after such notice they signify to the secretary their acceptance of office, shall be taken to have refused the same.]

SECT. 40. (R.) [Major-generals of division shall order elections to fill all vacancies which occur in their respective divisions, in the office of brigadier-general, field officer, captain, or subaltern. Such elections shall be held at the place most convenient for the majority of the electors, and shall be ordered throughout each division at least once in each year; the elections of company officers first, and those of field officers next.]

SECT. 41. (R.) [Electors shall be notified of elections at least ten days previously thereto. A non-commissioned officer or private unnecessarily



absent from company election, shall forfeit one dollar, to be recovered on complaint of the clerk, one-half to his use, and one-half to the use of the commanding officer.]

SECT. 42. (R.) [Officers ordering elections may preside, or detail some officer of suitable rank to preside.]

SECT. 43. (R.) [A captain, or staff officer of the rank of captain, may preside at the election of an officer of equal or inferior grade within the limits of his regiment or battalion; but no candidate for the vacancy shall preside at the election, except to adjourn the meeting if no proper officer appears to preside.]

At all elections such presiding officer shall keep a record of the proceedings, and make return thereof to the commanding officer of the battalion, regiment, brigade, or division, as may be proper.]

SECT. 44. (R.) [The person who has a majority of the written votes of the electors present at a meeting duly notified, shall be deemed elected, and the presiding officer shall forthwith notify him of his election, and make return thereof, or of neglect or refusal to elect, to the commander of the division. Every person so elected and notified, shall accept, if a brigadier-general or field officer, within ten days, or, if a company officer, forthwith; otherwise he shall be taken to have refused. If before the meeting for the election of any officer is dissolved, the person chosen signifies to the presiding officer his refusal to accept, the same shall be recorded and make part of the return, and the electors shall proceed to another election. Elections may be adjourned, not exceeding twice, and each adjournment for a period not exceeding two days; but no company election shall be legal unless it is notified in the manner prescribed in section forty-one.]

The original roster of the brigade, regiment, or battalion, or the original roll of the company, as the case may be, shall be produced at such elections, by the person having the legal custody thereof.]

SECT. 45. (R.) [When the electors neglect or refuse to elect to fill a vacancy, the commander in-chief, with the advice and consent of the council, shall appoint a suitable person. The commanding officer of the division shall return all elections, and refusals or neglects to elect, to the commander-in-chief, and unless he is notified by the commander-in-chief of his intention to make an appointment, he may, if necessary, order a new election.]

SECT. 46. (R.) [When a company newly enrolled, or, from any cause, is without commissioned officers, the commander of the regiment or battalion may without an order from the commander of the division, order an election of officers as soon as may be.]

SECT. 47. (R.) [When an officer holding a military commission is elected to another office in the militia, and accepts the same, such acceptance shall constitute a part of the return of the presiding officer, and shall vacate the office previously held.]

SECT. 48. (R.) [Commissions shall be transmitted to the commanding officers of divisions, and by them, through the proper officers, to the officers elect.]

SECT. 49. (R.) [When a person elected or appointed to an office refuses to accept his commission or qualify at the time of acceptance, the major-general shall certify the fact on the back thereof, and return it to the adjutant-general; and if the office is elective a new election shall be ordered.]

SECT. 50. (R.) [No candidate for office in the militia, pending or after an election, shall treat with intoxicating liquors the persons attending thereat, and no officer shall on days of military duty so treat persons performing such duty.]

SECT. 51. (R.) No officer or soldier shall be arrested on civil process, while going to, remaining at, or returning from, a place where he is ordered to attend for election of officers or military duty.]

R. S. 12, §§ 57, 98, 112.  
3 Pick. 386.  
See § 44.

Presiding officer at elections.  
1854, 337, § 9.  
Who to preside.  
Record and returns.  
R. S. 12, § 53.  
1854, 337, § 3.

Who to be deemed elected; elections may be adjourned; not legal unless electors are notified.  
Roster and rolls to be produced.  
R. S. 12, § 58.  
1837, 240, § 6.  
1832, 104, § 2.

When electors fail to elect.  
Returns of elections and refusals.  
New election ordered, unless, &c.  
R. S. 12, § 59.  
24 Pick. 181.

Elections in companies without officers.  
R. S. 12, § 60.  
1862, 111, § 2.

Acceptance of an office to vacate one previously held.

Commissions, how transmitted.  
R. S. 12, § 61.

When persons refuse to accept, new election to be ordered.  
R. S. 12, § 62.

Officers, &c., not to treat with intoxicating liquors.  
R. S. 12, §§ 63, 84.

Persons on duty privileged from arrest.  
R. S. 12, § 64.

Oath of commissioned officers—how administered and certified.  
Form of certificate.  
R. S. 12, § 65.  
8 Cush. 587.

SECT. 52. (R.) [Every commissioned officer, before he enters on the duties of his office or exercises any command, shall take and subscribe before a justice of the peace, or general or field officer who has previously taken and subscribed them himself, the following oaths and declarations:—

"I, A B, do solemnly swear that I will bear true faith and allegiance to the commonwealth of Massachusetts, and will support the constitution thereof: So help me, God."

"I, A B, do solemnly swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent on me as \_\_\_\_\_, according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution, and the laws of the commonwealth. So help me, God."

"I, A B, do solemnly swear that I will support the constitution of the United States."

And on the back of every commission the following certificate shall be printed and signed by the person before whom such officer is qualified:—

This may certify that A B, commissioned as within on this \_\_\_\_\_ day of A. D. \_\_\_\_\_ personally appeared, and took and subscribed the oaths required by the constitution and laws of this commonwealth and a law of the United States, to qualify him to discharge the duties of his office.

Before me,]

Clerk's oath.  
Certificate.  
R. S. 12, § 66.  
5 Pick. 289.  
See § 29.

SECT. 53. (R.) [Every clerk of a company, before he enters upon his duties, shall take the following oath, before the commanding officer of the company to which he belongs, viz.:—

"I, A B, do solemnly swear that I will faithfully and impartially perform all the duties incumbent on me, as clerk of the company to which I belong, according to the best of my abilities and understanding. So help me, God."

The commander of such company shall at the time of administering the oath certify on the back of the warrant of the sergeant appointed to be clerk, that he was duly qualified, by taking the oath required by law.]

Discharge of officers upon their own request.  
R. S. 12, § 67.

SECT. 54. (R.) [When an officer requests in writing his discharge from office, with the approval of the commanders of the regiment or battalion, brigade and division, to which he belongs, the commander-in-chief may discharge him.]

Request for discharge between May and November not to be approved, unless, &c.  
R. S. 12, § 68.

SECT. 55. (R.) [No commanding officer shall approve a resignation under the preceding section, if the same is offered between the first day of May and the first day of November, unless the reasons for such resignation are urgent and proved to his satisfaction; and the rolls, orderly book, roster, and documents, in the custody of the officer resigning, shall before his discharge is delivered to him, be deposited with the officer having a right to the custody of the same.]

If officer refuse to approve, commander-in-chief may discharge.  
R. S. 12, § 69.

SECT. 56. (R.) [If an officer unreasonably refuses to approve an application for discharge, and it is so made to appear to the commanders above him, they may approve the same, and the commander-in-chief may discharge the applicant.]

Officers not to be discharged, except—

SECT. 57. (R.) [No officer shall be discharged by the commander-in-chief, unless upon his own request, except as follows:—

when unable to discharge duties, &c.

When it appears to the commander-in-chief that he has become unable or unfit to discharge the duties of his office, or to exercise proper authority over his inferior officers and soldiers, or that he has been convicted of an infamous crime;

when removed out of the bounds of his command.

When the commander of his division certifies that he has, either before or after receiving his commission, removed his residence out of the bounds of his command to so great a distance, that in the opinion of such commanding officer it is inconvenient to exercise his command;

absent more than a year, &c.  
upon address, &c.  
upon sentence, &c.

When such commander certifies that he has been absent from his command more than one year without leave;

Upon address of both houses of the legislature to the governor;

Upon sentence of court martial, after trial according to law;

When the corps to which he belongs is disbanded ;

In which cases he may be so discharged. Every officer, except when under arrest, shall perform the duties of his office until he is discharged.]

SECT. 58. (R.) [When an officer accepts an appointment in the army of the United States, his office shall thereby become vacant ; and if after accepting such appointment, he exercises any of the powers and authority of such office, he shall forfeit not exceeding three hundred dollars.]

SECT. 59. (R.) [The commissions of staff officers appointed by a commanding officer, shall expire as soon as the successor of such commanding officer is commissioned.]

SECT. 60. (R.) [Officers under arrest shall not resign, but shall be suspended from exercising the duties of office.]

SECT. 61. (R.) [A non-commissioned officer or clerk of a company may resign his office to the commanding officer of his company, and be discharged by him.]

Officers when  
corps is dis-  
banded.  
R. S. 12, § 71.

Discharge by ap-  
pointment in  
U. S. army —  
Penalty.  
R. S. 12, §§ 72,  
101.

Staff commis-  
sions.  
R. S. 12, § 73.  
1837, 240, § 3.  
See § 9.

Officers under  
arrest.  
R. S. 12, §§ 70,  
116.  
Non-commis-  
sioned officer.  
R. S. 12, § 74.

#### THE ADJUTANT-GENERAL.

SECT. 62. (R.) [The adjutant-general shall hold his office for the term of one year, and until his successor is appointed and qualified, but may be removed at any time by the commander-in-chief.]

SECT. 63. (R.) [He shall give bond to the state in the penal sum of twenty thousand dollars, with two sureties at least, to be approved by the governor and council, conditioned faithfully to discharge the duties of his office ; to use all necessary diligence and care in the safe keeping of military stores and property of the commonwealth committed to his custody ; to account for the same, and deliver over to his successor, or to any other person authorized to receive the same, such stores and property.]

SECT. 64. (R.) [He shall receive a salary of eighteen hundred dollars a year, in full payment for all services rendered as such officer and as acting quartermaster-general and keeper of the public magazines, munitions of war, intrenching tools and other implements of war belonging to the commonwealth ; and may employ in his office a clerk at a salary of twelve hundred dollars a year.]

SECT. 65. (R.) [He shall distribute all orders from the commander-in-chief ; shall obey all orders relative to carrying into execution and perfecting any system of military discipline established by law ; and shall be in attendance when the commander-in-chief reviews the militia.]

SECT. 66. (R.) [He shall furnish blank forms of rolls and of the different returns that may be required, explaining the principles upon which they should be made ; of orders for the commanders of companies to order the non-commissioned officers and privates to notify their men to attend the inspections, trainings, reviews, and elections of officers, which may be ordered ; and of notifications or orders, to be left with the men.]

SECT. 67. (R.) [He shall make proper abstracts from the returns of the commanding officers of brigades and divisionary corps, and lay the same before the commander-in-chief, annually.]

SECT. 68. (R.) [He shall annually make a return, in duplicate, of the militia of the state, with their arms, accoutrements, and ammunition, according to such directions as he may receive from the secretary of war of the United States ; one copy of which he shall deliver to the commander-in-chief, and transmit the other to the president of the United States, on or before the first Monday in January.]

SECT. 69. (R.) [He shall, within twenty days after the receipt of each company or band pay roll under sections one hundred and twenty-two and one hundred and twenty-four, after carrying out therein opposite to the name of each man returned, the amount of pay to which he is

Adjutant-gen-  
eral.  
R. S. 12, §§ 22, 49.  
R. S. 12, § 25.  
1843, 17, § 1.  
to give bond.  
1843, 17, § 3.

salary of, clerk,  
&c.  
1843, 13, § 4.  
1864, 81, § 1.  
1858, 156.  
1859, 164.  
See 1862, 214.  
1863, 17, 181.  
1871, 368.

to distribute all  
general orders,  
&c., and to at-  
tend reviews.  
R. S. 12, §§ 12, 30,  
82

to furnish  
blank rolls and  
returns, and  
blanks for com-  
pany orders, &c.  
R. S. 12, §§ 9, 31,  
92.

to make ab-  
stracts of re-  
turns.  
R. S. 12, § 33.

to make annual  
returns in dupli-  
cate.  
R. S. 12, § 33.

to certify rolls,  
and transmit to  
towns  
1846, 218, §§ 3, 9.  
1849, 218, § 7.  
See § 129.

entitled, and certifying thereon that it contains the names of those persons only who are entitled to pay, transmit the same to the mayor and aldermen, or the selectmen of the city or town in which the armory or place of assembly of such company or band is situated.]

Adjutant-general to submit to the auditor, roll of officers entitled to pay.  
1845, 243, § 8.  
1846, 218, §§ 4, 9.  
1849, 56, § 2.  
1849, 218, § 7.  
See § 139.

SECT. 70. (R.) [He shall on or before the twenty-fifth day of January in each year, make out a certified roll of the names of all the general, field and staff officers that appear by the returns made to him under section one hundred and twenty-eight, to be entitled to the pay under section one hundred and thirty-seven, and shall ascertain from the returns made to him under sections one hundred and twenty-two and one hundred and twenty-four, the amount of money necessary to reimburse the several cities and towns, and shall submit such roll and result to the auditor; and the governor shall draw his warrant on the treasury for such sums as may be necessary to pay such officers and reimburse such cities and towns.]

account of expenditures.  
1837, 240, § 4.  
1849, 56, § 2.  
1857, 40, § 1.  
to distribute arms, &c.  
R. S. 12, §§ 49, 44.  
1840, 52, § 20.  
1842, 63, § 1.  
1844, 101, § 8.  
Resolves, 1845, 71, 82.  
1847, 77.  
Field pieces to remain in possession of towns, &c.  
Resolves, 1853, 53.

SECT. 71. (R.) [He shall, annually in January, lay before the auditor, an account, with vouchers, of his expenditures as adjutant-general and acting quartermaster-general.]

SECT. 72. (R.) [He shall distribute to the officers, regiments, battalions, and companies, of the volunteer militia, the arms, furniture, equipments, equipage, and books, required by law to be furnished at public expense, and may sue either in contract or tort any or all such officers for loss or damage sustained in articles so furnished them.]

SECT. 73. (R.) [He may permit the field pieces and artillery equipments now in the possession of the towns and cities, so to remain so long as they provide suitable places of deposit therefor, and keep them in good condition, without expense to the commonwealth.]

#### ARMS, EQUIPMENTS, EQUIPAGE, &c.

##### ARTICLES FURNISHED BY SOLDIERS.

What uniform to be provided.  
R. S. 12, §§ 39, 90, 112.  
1840, 92, § 22.  
4 Gray, 602.

SECT. 74. (R.) [Officers of the line and staff, and officers and soldiers of a company raised at large, shall provide themselves with such uniforms complete as the commander-in-chief prescribes, subject to such restrictions, limitations, and alterations, as he may order; and every such soldier deficient therein shall forfeit two dollars, to be recovered on complaint of the clerk, one-half to his use, and one-half to the use of the commanding officer.]

Uniform, &c., exempt from attachment  
R. S. 12, § 42.  
1857, 235, § 1.

SECT. 75. (R.) [Every officer and soldier shall hold his uniform, arms, ammunition, and accoutrements, required by law, free from all suits, distresses, executions, or sales, for debt or payment of taxes.]

##### ARTICLES FURNISHED BY THE STATE.

Camp equipage to be furnished to commanders of divisions, &c.  
Resolves, 1847, 77.

See 1862, 111, § 9.

SECT. 76. (R.) [The quartermaster-general shall deliver as a loan from the state to the commanding officer of each division, brigade, regiment, battalion, or company, of the volunteer militia, such tents, fixtures, and other camp equipage as may be in the state arsenal; and each officer to whom such equipage is delivered, shall be responsible for the safe keeping of the same; and in case of the discharge or death of such officer, he or his legal representative shall be released from such responsibility, upon filing in the office of the adjutant-general, a certificate of the officer succeeding him in command, that the articles so furnished are at the date of the certificate, in good order and condition, reasonable use and wear thereof excepted.]

Colors to be furnished  
Who responsible.  
R. S. 12, § 43.

SECT. 77. (R.) [Each regiment and battalion shall be furnished by the state with the state and regimental colors, their staffs, belts, and sockets, and the commander of such regiment or battalion shall be responsible for their safe keeping.]

Arms and equip-

SECT. 78. (R.) [Each company of the volunteer militia on application

by the commander thereof to the adjutant-general, and producing satisfactory evidence that a suitable armory or place of deposit is provided therefor agreeably to section eighty-eight, shall be furnished with such appropriate arms and equipments as shall be determined by the commander-in-chief.]

SECT. 79. (R.) [The commissioned officers of every company of volunteer militia shall, from the time of their being qualified, be responsible for the safe keeping and return of all arms, equipment, and equipage, furnished and in their possession, by provisions of law, and for any loss or damage thereto, compensation may be obtained by an action of contract brought by the adjutant-general against all or any of such officers.]

SECT. 80. (R.) [In case of the discharge or death of such an officer, he or his legal representative shall be relieved from such responsibility, upon filing in the office of the adjutant-general a certificate signed by not less than two commissioned officers of his company, that such articles are, at the date of the certificate, undiminished in quantity and value, reasonable use and wear excepted.]

SECT. 81. (R.) [Upon the disbandment of a volunteer company which has received arms, equipments, or equipage, from the adjutant-general, he shall receive the same on presentation thereof by the officers of the company, or their agents.]

SECT. 82. (R.) [Each company of militia shall be furnished with such instruments of music as the commander-in-chief shall order. Each commander of a brigade may draw orders upon the quartermaster-general, or officer acting as such, in favor of the commanders of regiments, battalions, and companies, for colors and instruments of music. Commanders of companies shall be responsible for the safe keeping of the instruments delivered to them for the use of their companies.]

SECT. 83. (R.) [Each company of foot artillery shall be provided by the quartermaster-general with the battery of manœuvre prescribed for that arm by the war department of the United States; with caissons, harness, implements, laboratory, and ordnance stores, which may, from time to time, be necessary for their complete equipment for the field; and, when a state of war, or danger thereof, renders target practice expedient in the opinion of the commander-in-chief, such quantity of ammunition annually as he deems necessary to be expended in experimental gunnery. The commissioned officers of each company shall be accountable for the preservation of the pieces, apparatus, and ammunition aforesaid, and for the proper expenditure of the ammunition.]

SECT. 84. (R.) [The commanding officer of such company, when it is ordered to march out of the city or town where the gun-house is situated, and on occasions of parade for experimental gunnery, or camp duty, shall provide horses to draw the field pieces and caissons, and present his account of the expenses thereof, as provided in section one hundred and forty-nine. On all other occasions when ordered out by an officer of competent authority for camp or salute duty, the charges for horses, powder, and necessary expenses, shall be defrayed by the quartermaster-general.]

SECT. 85. (R.) [Every general and field officer, division and brigade-inspector, adjutant of regiment or battalion, and commander of a company, shall be furnished with Scott's Infantry Tactics, adopted by the war department in the year eighteen hundred and thirty-five; every subaltern officer of an infantry company with the first and second volumes of said Tactics; every field, staff, and company officer, and non-commissioned officer, with the compend of instruction in military tactics and the manual of percussioned arms with extracts from the army regulations, prepared by the adjutant-general. All which books shall be considered public property, and delivered by such officers to their successors.]

ments to be furnished.  
1840, 92, § 20.

Commissioned officers responsible for equipments.  
1840, 92, § 20.  
1842, 93, § 1.  
1852, 312  
Resolves, 1845, 71.

how relieved from responsibility, in case of discharge, &c.  
1842, 93, § 2.  
Resolves, 1845, 71.

Arms, &c., to be received from disbanded company.  
1842, 93, § 4.

Instruments of music furnished. Commander of brigade to draw order.  
Who responsible.  
R. S. 12, § 43.

Cannon, ammunition, &c., to be furnished to artillery.

When in state of war, &c., powder, &c., furnished.

Who accountable.  
R. S. 12, § 44  
1849, 218, § 13.  
1853, 174, § 7.

When company ordered to march out of town, &c.  
Expenses of battery, how paid.  
R. S. 12, § 45.  
1849, 218, § 13.

Scott's Tactics, &c., to be furnished to officers.  
Resolves of  
1852, 17, 27.  
1854, 32.  
See 1862, 111, § 11.

Military stores may be sold, &c. Resolves, 1822, 28.

See 1862, 167.

Committee of legislature to visit arsenal and report. Resolves, 1845, 12.

SECT. 86. (R.) [The commander-in-chief, with the advice and consent of the council, may sell or exchange, from time to time, such military stores belonging to the quartermaster-general's department as are found unserviceable or in a state of decay, or which they think it for the interest of the state to so-sell or exchange.]

SECT. 87. (R.) [The committee of the legislature on the militia shall, annually in January, visit the arsenal in Cambridge, and make a thorough examination into the condition of the same, of the arms and munitions of war, and other property of the state or general government deposited there, and report the condition of the arsenal and property.]

#### ARMORIES.

Armories, selectmen, &c., to provide. 1840, 92, § 20. 1853, 188, § 1. See § 78.

rent of, &c., to be certified by selectmen, &c. 1853, 188, § 2. See § 91.

Adjutant-general to audit, &c., claims for rent. Payment. 1849, 56, § 2. 1853, 188, § 3. 1857, 303, § 2. 1858, 166, § 2.

Penalty for false certificate. 1853, 188, § 4.

Armories, &c., how examined. 1840, 92, § 20.

SECT. 88. (R.) [The mayor and aldermen and selectmen shall provide for each company of militia within the limits of their respective places a suitable armory or place of deposit for the arms, equipments, and equipage, furnished it by the state. When a company is formed from different places, the location of such armory or place of deposit shall be determined by a majority of its members.]

SECT. 89. (R.) [They shall annually in October or November transmit to the office of the adjutant-general a certificate, verified by the oath or affirmation of at least two of their board, showing the name of each company furnished with an armory, the amount paid for the rent thereof, and stating that a majority of their board consider such armory necessary for the use of such company, and that the rent charged therefor is fair and reasonable according to the value of real estate in their place.]

SECT. 90. (R.) [The adjutant-general shall annually examine all certificates so returned to his office, institute any inquiries he deems expedient relative thereto, and allow them in whole or in part to an amount not exceeding three hundred dollars for one company. He shall within ten days after such examination file in the office of the auditor his certificate stating the sums allowed, the name of the company for whose use each sum is allowed, and the place to which it belongs; and shall thereupon notify the mayor, aldermen or selectmen, of the sum allowed to their place, which sum shall be paid upon the warrant of the governor to such mayor and aldermen or selectmen, as provided by law for the reimbursement of sums paid for military service.]

SECT. 91. (R.) [A city or town receiving from the treasury of the commonwealth, by reason of a false return or certificate, under section eighty-nine, any money to which such place is not entitled, shall forfeit a sum not exceeding four times the amount of money so received.]

SECT. 92. (R.) [The commander-in-chief may at any time detail an officer to examine any armory and report the condition thereof, and of the arms, equipments, and equipage, therein deposited.]

#### ORDERS AND NOTIFICATIONS.

Orders, by whom distributed. R. S. 12, §§ 12, 30. 1837, 240, § 8.

Companies ordered out, how notified. R. S. 12, §§ 88, 100, 112. 13 Mass. 433. 9 Pick. 41, 557. 10 Pick. 134. 17 Pick. 243. 24 Pick. 172.

SECT. 93. (R.) [Orders from the commander-in-chief shall be distributed by the adjutant-general; division orders, by the division-inspector; brigade orders, by the brigade-major; regimental and battalion orders, by the adjutant; company orders, by the clerk, or by any non-commissioned officer or private, when so required by the commanding officer.]

SECT. 94. (R.) [When a commander orders out his company for military duty, or for election of officers, he shall order one or more of the non-commissioned officers or privates, to notify the men belonging to the company to appear at the time and place appointed. Such non-commissioned officer or private shall give notice of such time and place to every person whom he is ordered to notify; if he fails so to do, he shall forfeit not less than twenty nor more than one hundred dollars, to be

recovered on complaint of the clerk, one-half to his use and one-half to the use of the commanding officer.]

SECT. 95. (R.) [No notice shall be legal unless given by such non-commissioned officer or private to each man verbally, or by leaving at his usual place of abode a written or printed order signed by such officer or private four days at least previous to the time appointed, if for military duty, and ten days previous thereto, if for election of officers; but in case of invasion, insurrection, riot, or an unforeseen or sudden occasion, a verbal, written, or printed notice, however short, shall be legal. When a company is paraded, the commanding officer may verbally notify the men to appear at a future day, not exceeding thirty days from the time of such parade, which shall be sufficient notice as respects the persons present; and all commanders of companies may on parade, read division, brigade, or regimental orders, and notify the soldiers of their several commands to appear as by such orders required; which notice shall be a sufficient warning. Notifications may be proved, as provided in section one hundred and fifty-four.]

SECT. 96. (R.) [When a company is without commissioned officers, the commander of the regiment or battalion to which it belongs, or the officer detailed by him to discipline the same, shall in writing order any non-commissioned officers or privates to notify the persons liable to do duty in such company, to appear for duty required by law, at the time and place mentioned in such order; and, if a non-commissioned officer or private refuses or neglects so to notify, he shall forfeit and pay to the use of his regiment or battalion not less than twenty nor more than one hundred dollars, to be recovered on complaint by the commander thereof.]

SECT. 97. (R.) [Clerks of companies shall record in the orderly book, company orders and notifications; but such record shall not be necessary to the recovery of a penalty.]

#### DISCIPLINE, TRAININGS, INSPECTION, AND CAMP DUTY.

SECT. 98. (R.) [The system of discipline and field exercise ordered to be observed by the army of the United States, in the different corps, or such other system as may hereafter be directed for the militia by laws of the United States, shall be observed by the militia.]

SECT. 99. (R.) [The commander of every regiment, battalion, and detached company, may annually order out the commissioned and non-commissioned officers under his command, for elementary drill, two separate days between the middle of May and the middle of July, at such place as he deems most convenient; and if the place of any such officer in a company is vacant, the commander thereof shall detail from the privates under his command a sufficient number to make up the deficiency. Every person unnecessarily neglecting to attend at the time and place appointed for such drill, shall forfeit to the use of his regiment, battalion, or company, three dollars, to be recovered by any commissioned officer thereof, in an action of tort.]

SECT. 100. (R.) [Unless the commander-in-chief prescribes the time, place, and manner, of assembling the troops for the purposes declared in this section, each commander of division shall annually order an encampment of his division by brigades or regiments, at some time between the middle of July and the middle of October. The orders for encampment by brigade shall be promulgated in the brigade thirty days before the time appointed for the encampment; the orders for encampment by regiment shall be promulgated in the regiment twenty days before such time. The place and, if no time is designated by the commander of division, the time of encampment shall be designated by the commander of the troops to be assembled, and regard shall always be had to the convenience, proximity, and accommodation, of the troops to be assembled; but no ground shall be occupied for an encampment in

Notifications,  
requisites and  
times of.  
Verbal notice on  
parade.  
Notifications,  
how proved.  
R. S. 12, § 89.  
1840, 92, § 24.  
15 Pick. 7.  
21 Pick. 332.  
22 Pick. 406.  
23 Pick. 54, 57.

Company with-  
out officers, how  
notified.  
Penalty.  
R. S. 12, §§ 91,  
100, 111.  
See § 80.

Orders, &c., to be  
recorded.  
R. S. 12, § 98.

System of disci-  
pline, &c.  
R. S. 12, § 75.  
1840, 92, §§ 5, 21.

Commanders of  
regiments, &c.,  
to order elemen-  
tary drills.  
Penalty for non-  
attendance.  
1864, 367, §§ 3, 4.  
See 1862, 111, § 4.

Encampments.  
Orders for, how  
issued.  
Place of.  
R. S. 12, § 78.  
1849, 213, §§ 2, 6.  
1851, 302.  
1853, 174, §§ 1, 2.  
1853, 196, § 7.  
7 Gray, 360.  
See 1862, 111,  
§§ 5, 6, 7.

Distance companies to march. Parade of more than brigade.  
R. S. 12, § 78.  
1840, 92, § 24.

Troops to be exercised, inspected, &c.  
R. S. 12, §§ 98, 112.  
1852, 104, §§ 6, 9.  
See 1862, 111, § 6.

Company roll calls, how made.  
1857, 303, § 1.  
1868, 166, § 1.

Rank of corps. Senior officer to command.  
R. S. 12, § 79.  
1858, 337, § 1.  
See § 37.

Companies without officers, how commanded.  
R. S. 12, § 79.

Brigade-majors to attend reviews, inspect arms, &c.  
R. S. 12, § 81.

Officers and soldiers may drill in camp, &c.  
1849, 218, § 8.

Bounds of parade may be fixed. Punishment for intrusion.  
R. S. 12, § 80.

Persons not holden to do duty on days of certain elections, except, &c.

Liability of officers.  
R. S. 12, §§ 86, 101.  
See §§ 100, 161.

time of peace without the consent of the selectmen of the town, or mayor and aldermen of the city where the encampment is to be made.]

SECT. 101. (R.) [No officer or soldier shall be obliged to march more than fifteen miles from his residence to a review, except of a regiment, battalion, or less body, and no larger body than a brigade shall be ordered to parade at the same time and place, except by order of the commander-in-chief.]

SECT. 102. (R.) [Each encampment shall last three days; the troops shall be inspected, reviewed, and thoroughly exercised, as companies, battalions, or brigades, in the whole routine of camp and field duty. Every non-commissioned officer and private, holden by law to do military duty in a company, and unnecessarily neglecting to appear at the time and place appointed for encampment, shall forfeit five dollars, to be recovered on complaint of the clerk, one-half to his use and one-half to the use of the commanding officer.]

SECT. 103. (R.) [Each company roll call shall be made during the term of encampment, under the supervision and in presence of a regimental or commissioned staff officer, to be designated by the commanding officer of the regiment or battalion to which the company is attached.]

SECT. 104. (R.) [Each division, brigade, regiment, and battalion, shall, in the field, rank according to its number, the lowest number having the highest rank; companies in a regiment or battalion shall form according to the rank of the officers present commanding them; and when distinct corps parade, join, or do duty, together, the senior officer present shall command.]

SECT. 105. (R.) [When a company destitute of commissioned officers parades with other troops, the officer in command shall detail one or more commissioned officers present to command it, unless the officer detailed by the commander of the regiment to command it is present.]

SECT. 106. (R.) [The brigade majors and inspectors shall attend the annual encampments of the regiments and battalions in their brigades while encamped separately, and while they are under arms, inspect their arms, ammunition, and accoutrements, superintend their exercises and manœuvres, and introduce the system of military discipline required by law and by orders received from time to time from the commander-in-chief.]

SECT. 107. (R.) [By permission of the officer in chief command, and of their own immediate superiors, officers, privates, and musicians, may drill and manœuvre in camp in undress uniform or fatigue dress, and mounted officers may discharge their duties on foot.]

SECT. 108. (R.) [Every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade, (not including a road, so as to prevent passing,) within which no spectator shall enter without leave from such commanding officer. Whoever intrudes within the limits of the parade, after being forbidden, may be confined under guard during the time of parade, or a shorter time, at the discretion of the commanding officer; and whoever resists a sentry who attempts to put him or keep him out of such limits, may be arrested by order of the commanding officer, and carried before a court or magistrate, to be examined or tried upon complaint for such assault, or disturbance or breach of the peace.]

SECT. 109. (R.) [No officer or soldier shall be holden to perform military duty except in case of invasion, insurrection, riot, or tumult made or threatened, or in obedience to the orders of the commander-in-chief, on a day appointed for a meeting in the town in which he resides for the election of governor, lieutenant-governor, senators, electors of president or vice-president of the United States, or representatives to congress or the general court; and an officer parading his company or ordering it to parade contrary to the provisions of this section, shall, besides being liable to a court martial, forfeit not less than fifty nor more than three hundred dollars.]



SECT. 110. (R.) [The commander-in-chief may order out any portion of the militia for escort and other duties. The commanders of companies or corps so ordered out shall present their accounts for necessary music to the quartermaster-general, who shall pay the same out of the money of the state in his hands.]

Commander-in-chief may order escort, &c.  
Music.  
R.'s. 12, § 86.  
Resolves, 1811, 64.

SECT. 111. (R.) [Nothing herein contained shall be construed to prevent any company from meeting for the purpose of drill, funeral or other escort, or a voluntary service; nor to impair the obligation arising under constitutional articles of agreement adopted by the company, so far as regards the members who have signed the same, unless they are repugnant to law. All fines, penalties, and assessments incurred by officers or soldiers of such company, under such constitutional articles of agreement signed by them, and approved by the commander-in-chief, may, in addition to any other remedy thereon, be recovered on complaint of the clerk.]

Voluntary parades not prohibited.

Articles of agreement adopted by company binding.  
Remedy for breach thereof.  
R. S. 12, § 87.

SECT. 112. (R.) [Every non-commissioned officer or private who appears at a parade or drill required by law, deficient in any arm furnished him by the state, or with such arms unserviceable or in bad condition, shall forfeit one dollar, and every such officer or private so appearing, deficient in any article of equipment or ammunition furnished to or required of him by law or general order, or with such equipment or ammunition of bad quality or condition, shall forfeit fifty cents, to be recovered on complaint of the clerk, one-half to his use and one-half to the use of the commanding officer.]

Penalty for deficiency in arms, &c.  
R. S. 12, §§ 43, 44, 99, 112.  
1849, 218, § 13.  
1852, 104, § 6.

SECT. 113. (R.) [A soldier who unnecessarily, or without order from a superior officer, comes to any parade, with his musket, rifle, or pistol, loaded with ball, slug, or shot, or so loads the same while on parade, or unnecessarily, or without order from a superior officer, discharges the same when going to, returning from, or upon parade, shall forfeit not less than five nor more than twenty dollars, to be recovered on complaint of the clerk, one-half to his use and one-half to the use of the commanding officer.]

Loaded arms not to be brought on parade, &c.  
R. S. 12, §§ 88, 100, 112.

SECT. 114. (R.) [A soldier behaving with contempt towards an officer, or conducting in a disorderly manner, or exciting or joining in a tumult or riot, or being guilty of unmilitary conduct, disobedience of orders, or neglect of duty when under arms or on duty, shall forfeit not less than five nor more than twenty dollars, to be recovered as provided in the preceding section.]

Contempt, disorderly conduct, &c., how punished.  
R. S. 12, § 100.

SECT. 115. (R.) [A soldier quitting his guard, section, platoon, or company, shall forfeit not less than two nor more than ten dollars, to be recovered, if the offence is committed at a regimental or battalion parade, on complaint by the commander of the regiment or battalion, or the company clerk; if at any other parade, by the clerk.]

Quitting guard, &c., how punished.  
R. S. 12, § 100.

SECT. 116. (R.) [For any offence mentioned in the preceding section the delinquent may be put and kept under guard by the commander of the company, regiment, or of the field, for a time not extending beyond the term of service for which he is then ordered. A non-commissioned officer, for an offence mentioned in this chapter, or for disobedience of orders or unmilitary conduct at a regimental or battalion parade, may besides incurring the fine prescribed be reduced to the ranks by the commander of his regiment or battalion; and for such misconduct at any other parade, by such commander with the advice of his company commander.]

Soldiers may be put under guard. Non-commissioned officer may be reduced to ranks.  
R. S. 12, § 100.

SECT. 117. (R.) [Soldiers in companies without officers, when ordered out to be trained and disciplined, shall for absence, deficiency, misconduct, or neglect, be liable to the fines prescribed for offences in other companies, to be recovered upon complaint of the officer so detailed, substantially as by clerks under section one hundred and fifty-four, one-half to the use of such officer and one-half to the use of the regiment or battalion.]

Penalties on soldiers in companies without officers.  
R. S. 12, §§ 104, 111.

## ROSTERS, ORDERLY BOOKS, ROLLS, AND RETURNS.

Rosters and orderly book, by whom kept.  
R. S. 12, § 27.  
1837, 240, § 8.

Company rolls, how kept, to be revised and corrected.  
R. S. 12, §§ 9, 28.  
22 Pick. 406.  
23 Pick. 54, 208.

Company orderly book, how kept. Delinquencies, fines, &c., to be recorded.  
R. S. 12, § 29.  
23 Pick. 54, 208.

Commander of companies to make duplicate returns in ten days. Returns of divisionary corps, &c., to whom made.  
R. S. 12, § 15.  
1846, 218, § 1.  
1849, 218, § 9.  
1858, 166, § 1.

to make alphabetical pay rolls of companies within ten days after camp duty.  
1846, 218, § 2.  
1849, 218, § 9.  
1858, 166, § 1.  
See §§ 69, 70, 139, 140.

Penalty for neglect, or false return, &c.  
1846, 248, § 10.  
1849, 218, § 9.  
2 Met. 296.

Returns by master of regimental or battalion band.  
1846, 218, § 9.  
See §§ 69, 70, 139, 140.

SECT. 118. (R.) [The division-inspector of each division, the brigade-major of each brigade, and the adjutant of each regiment, battalion, or corps, shall constantly keep a correct roster of the command to which he belongs, and an orderly book in which he shall record orders received and issued.]

SECT. 119. (R.) [A fair and exact roll of each company shall be kept by the clerk, under the direction of the commander, with the state of the arms and equipments furnished to each man, in the form prescribed for the returns of the militia by the commander-in-chief. Such rolls shall be annually revised in the month of May, and corrected from time to time, as the state of the company and alterations in it may require.]

SECT. 120. (R.) [An orderly book shall also be kept in each company, by the clerk, under the direction of the commander, and the proceedings of the company, orders received and issued, and exact details of drafts and detachments, shall be recorded therein. Fines and forfeitures, with the time when, and the offence, neglect, default, or deficiency, for which they were incurred, money collected by him with the names of the persons from whom collected, and all delinquencies and deficiencies, shall be recorded in said book, which shall not be alienated from the company, and shall always be open to the inspection of its officers.]

SECT. 121. (R.) [At the conclusion of each tour of camp duty, commanders of companies shall make correct duplicate returns of their several companies for each day of the encampment, upon which the commander of the regiment or battalion to which the company belongs shall certify that such company on each of the days of encampment well and faithfully performed the duties required by law, and the staff officer supervising the roll shall certify thereon that the number of officers, non-commissioned officers, musicians, and privates therein reported as present and doing duty each day is correct. He shall deliver one of such returns to the brigade-major or inspecting officer on duty in the camp, and transmit the other, within ten days after said tour of camp duty, to the office of the adjutant-general. The returns of companies attached to divisions or brigades, and not to regiments, shall be certified by the commanding officers of divisions or brigades respectively, and by staff officers of the division or brigade.]

SECT. 122. (R.) [The commander of a company, within ten days after each tour of camp duty, shall make a correct alphabetical pay roll of his company, containing the names of the members who appeared, armed, uniformed, and equipped, and performed all the duties required on the days of encampment, and showing the duty done by each member, and transmit the same, certified under his oath to be correct and true, to the office of the adjutant-general. Such roll shall not contain the name of a private who has done duty as a musician, and the whole number so returned shall in no case exceed the number allowed to his company by sections fourteen and twenty-seven.]

SECT. 123. (R.) [A commanding officer of a company who neglects to make the returns required by the two preceding sections, shall forfeit twenty-five dollars, and for making a false return in any case, shall forfeit one hundred dollars, to be prosecuted for by the officer to whom the return should be made.]

SECT. 124. (R.) [The master of every regimental or battalion band shall, within ten days after a parade thereof, made under order of the commander of the regiment or battalion to which such band belongs, make and transmit to the adjutant-general an alphabetical list of the men who appeared in uniform and performed duty on such day, the last return to be made on or before the tenth day of November; upon which the commanding officer to whom the band was ordered to report for duty,

shall certify that the duty was well and faithfully performed. For neglect to make such return, the master shall forfeit twenty-five dollars, and for making a false return shall forfeit one hundred dollars, to be prosecuted for by the officer to whom the return should be made.]

SECT. 125. (R.) [On the last day of each tour of camp duty, commanders of regiments and battalions shall make correct certified rolls of the field and staff officers of their several commands on duty for each day, specifying the names, rank, and duty done, by each officer who appeared armed, uniformed, and equipped, on any day, and deliver the same to the brigade-major or inspecting officer of the camp. Every officer neglecting to make such returns, shall forfeit for each offence fifty dollars, and for making a false return in any case two hundred dollars, to be prosecuted for by the officer to whom the return should be made.]

SECT. 126. (R.) [Brigade-majors within twenty days after each tour of camp duty done by their respective brigades, or the regiments or battalions thereof, shall make and transmit to the commander of the brigade a correct return of such brigades, reporting therein the condition of the arms, accoutrements, and ammunition, of the several corps, with such suggestions relating to the government of the militia, and the advancement of order and discipline, as in his judgment may be required; and also in like manner make and transmit to the commander of division a certified roll of the general field and staff officers of their several brigades, specifying the rank of and duty done by each one who appeared uniformed and equipped, and performed duty on any day. For neglect to make either of said returns each brigade-major shall forfeit seventy-five dollars, and for making a false return in any case, three hundred dollars, to be prosecuted for by the officer to whom the return should be made.]

SECT. 127. (R.) [Commanders of brigades shall within thirty days after each tour of camp duty performed by the troops under their respective commands, transmit to the commanders of their divisions a correct return of their respective brigades, as furnished by the brigade-majors under the preceding section. Commanders of divisions shall within ten days after the receipt of such returns of brigades under their respective commands, transmit to the office of the adjutant-general correct returns of the state of their divisions, as derived from such brigade returns. Each officer, for neglect to make the returns required of him under this section, shall forfeit for each offence one hundred dollars, to be prosecuted for by the officer to whom the return should be made.]

SECT. 128. (R.) [Commanders of divisions shall, annually, on or before the first day of November, make and transmit to the office of the adjutant-general a certified roll of the general field and staff officers in their respective divisions, specifying the name, rank, and duty done, by each one who has appeared armed, uniformed, and equipped, and performed duty, on any day. For neglect to make such return, such commander shall forfeit one hundred dollars, and for making a false return in any case five hundred dollars, to be prosecuted for by the officer to whom the return should be made.]

Commanders of regiments, &c., to make returns of officers.  
Penalties.  
1846, 218, § 5.  
1849, 218, § 10.  
1864, 367, § 10.

Brigade-majors to make returns of brigade and field and staff officers, &c.  
Penalty.  
R. S. 12, § 32.  
1846, 218, § 5.  
1849, 218, § 11.  
1864, 367, §§ 1, 2, 10.

Commanders of brigade to make returns to commanders of division.

Commanders of division to make returns to adjutant-general.

Penalties.  
1864, 367, §§ 1, 2.

Commanders of division to make out roll of officers.  
Penalty.  
1846, 218, § 5.  
1849, 218, § 12.  
See § 70.

#### CALLING OUT THE MILITIA IN CASE OF WAR, INVASION, INSURRECTION, TUMULT, OR RIOTS.

SECT. 129. (R.) [When an invasion of or insurrection in the state is made or threatened, the commander-in-chief shall call upon the militia to repel or suppress the same; and may order out divisions, brigades, regiments, battalions, or companies; or may order to be detached parts or companies thereof, or any number of men to be drafted therefrom, and may cause officers to be detailed, sufficient, with those attached to

Militia, how called out in case of invasion, &c.  
When commander of division may order out troops

R. S. 12, § 129.  
1840, 52, §§ 5, 11.  
8 Mass. 649.  
See §§ 161, 168.

Drafts.  
Officers detailed.  
R. S. 12, § 130.  
See §§ 161, 168.

If company without officers be called out, officer to be detailed.  
R. S. 12, § 131.  
See §§ 161, 168.

Penalty on soldiers neglecting to appear, &c.  
Soldiers to take provisions.  
R. S. 12, § 132.  
See §§ 161, 168.

Selectmen, &c., to provide carriages, &c., in certain cases.  
Penalty.  
Officer responsible.  
R. S. 12, § 133.  
See §§ 144, 161, 168. Ch. 144, §§ 65, 66. Ch. 134, § 5.

Troops, how ordered out in case of riot, &c.  
1840, 52, § 27.  
5 Gray, 121.

the troops, to organize the forces. If such invasion, or insurrection, or imminent danger thereof, in any part of the state is so sudden that the commander-in-chief cannot be informed and his orders received and executed in season to resist or suppress the same, a commander of division in such part of the state may order out his division, or any part thereof, as the commander-in-chief might do.]

SECT. 130. (R.) [When a draft from the militia is ordered, the non-commissioned officers and privates, except so many as offer to serve voluntarily, shall be drafted by lot from the company, and the officers regularly detailed from the roster.]

SECT. 131. (R.) [If a company without officers is ordered to march, or a draft or detachment is ordered therefrom, the commander of the regiment or battalion shall detail an officer to command, who shall have the same authority to order them to appear, to command them in the field, or to make a draft or detachment therefrom, as the captain of such company would have; and shall be under the same responsibility.]

SECT. 132. (R.) [Every soldier so ordered out, detached, or drafted, who does not appear armed and equipped according to law, at the appointed time and place, or provide a substitute, or within twenty-four hours pay to the captain of his company fifty dollars, shall be taken to be a soldier absent without leave; and each soldier, ordered out, detached, or drafted, when so ordered, shall take with him provisions for not less than three days.]

SECT. 133. (R.) [The selectmen of a town and the mayor and aldermen of a city to which men so ordered out, detached, or drafted, belong, when required in writing by the commander of a regiment or detachment, shall provide carriages to attend them with further supplies of provisions, and to carry necessary baggage, and provide necessary camp equipage and utensils, until notified by the commanding officer to desist; and shall present their accounts, as provided in section one hundred and forty-nine. For any neglect by mayor and aldermen or selectmen under this section, their place shall forfeit not less than twenty nor more than five hundred dollars. The officer, to whom any articles above mentioned are delivered, shall be responsible that care is taken of the same.]

SECT. 134. (R.) [When there is in any county a tumult, riot, mob, or a body of men acting together by force with intent to commit a felony, or to offer violence to persons or property, or by force and violence to break and resist the laws of the commonwealth, or when such tumult, riot, or mob, is threatened, and the fact is made to appear to the commander-in-chief, or the mayor of a city, or to a court of record sitting in said county, or, if no such court is sitting therein, then to a justice of such court, or, if no such justice is within the county, then to the sheriff thereof, the commander-in-chief may issue his order, or such mayor, court, justice or sheriff may issue a precept, directed to any commander of a division, brigade, regiment, battalion, or corps, directing him to order his command, or a part thereof, (describing the kind and number of troops,) to appear at a time and place therein specified, to aid the civil authority in suppressing such violence, and supporting the laws; which precept, if issued by a court, shall be in substance as follows:—

— ss.

#### COMMONWEALTH OF MASSACHUSETTS.

Form of requisition, &c.

L. S.  
To { insert the officer's title. } A B, commanding. { insert his command.  
Whereas it has been made to appear to our justices of our , now holden at , within and for the county of , that (here state one or more of the causes above mentioned) in our county of , and that military force is necessary to aid the civil authority in suppressing the same; now therefore, we command you that you cause, (here state the number and kind of troops required,) armed, equipped, and with ammunition, as the law directs, and with proper officers, either attached to

the troops, or detailed by you, to parade at \_\_\_\_\_, on \_\_\_\_\_, then and there to obey such orders as may be given them, according to law. Hereof fail not at your peril; and have you there this writ, with your doings returned thereon.

Witness, L. S., Esq., at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_

C. D., Clerk.

And if the same is issued by a mayor, justice, or sheriff, it shall be under his hand and seal, and otherwise varied to suit the circumstances of the case.]

SECT. 135. (R.) [The officer to whom the order of the commander-in-chief or such precept is directed, shall forthwith order the troops therein mentioned to parade at the time and place appointed. If he refuses or neglects to obey such order or precept, or if an officer neglects or refuses to obey an order issued in pursuance thereof, he shall be cashiered and punished by fine or imprisonment not exceeding six months, as a court martial may adjudge. And a non-commissioned officer or soldier neglecting or refusing to appear at the place of parade to obey an order issued in such case, or any person advising or endeavoring to persuade an officer or soldier to refuse or neglect to appear at such place, or to obey such order, shall forfeit fifty dollars.]

Penalties for disobedience, &c.  
R. S. 12, § 135.  
1840, 92, §§ 23, 28.  
See §§ 161, 168.

SECT. 136. (R.) [Such troops shall appear at the time and place appointed, armed and equipped, and with ammunition as for inspection of arms, and shall obey and execute such orders as they may then and there receive according to law.]

Troops to appear armed, &c.  
1840, 92, § 29.  
See §§ 161, 168.

#### COMPENSATION.

SECT. 137. (R.) [General, field, and commissioned staff officers shall receive for each day's duty in camp, and according to the returns of the inspecting officers of encampment, five dollars, and non-commissioned staff officers three dollars a day, to be paid them from the state treasury, upon the warrant of the governor and council, and according to a pay roll made up in the office of the adjutant-general.]

Pay of general, field, and staff officers.  
1849, 218, § 7.  
1852, 104, § 1.  
See § 70.

SECT. 138. (R.) [Division-inspectors, brigade-majors or inspectors, and adjutants of regiments or battalions, of volunteer militia, shall receive twenty-five dollars annually; adjutants of enrolled organized militia, twelve dollars annually.]

Pay of inspectors, &c.  
R. S. 12, § 123.  
1837, 240, § 8.  
1839, 163.  
1842, 98, § 9.

SECT. 139. (R.) [Every officer and soldier of the volunteer foot companies shall receive, for each day's duty in camp, two dollars and fifty cents.

of members of companies, and bands, how computed, disbursed, &c.  
1840, 218, §§ 3, 4, 8, 9.  
1849, 58, § 2.  
1849, 218, § 7.  
1853, 174, § 6.  
1859, 221.  
2 Met. 236.  
4 Gray, 601.  
2 Allen, 123.

Every member of a regimental or battalion band shall receive, for services performed in obedience to an order of his regimental or battalion commander, at the rate of three dollars a day while on duty.

Every member of a mounted company or band shall receive double the pay allowed to such members performing duty on foot.

Such sums shall be computed by the adjutant-general on the company and band pay rolls, made out, certified, and returned, under sections one hundred and twenty-two, and one hundred and twenty-four.

After such computation, such pay rolls shall be transmitted to the mayor and aldermen of the cities and the selectmen of the towns in which such companies and bands are situated, as provided in section sixty-nine.

Upon receipt of the same, the mayor and aldermen, and selectmen, shall draw their warrants upon their respective treasurers, directing them to pay the amount due to the persons named in such rolls, and shall, annually, on or before the first day of December, under a penalty of thirty dollars for neglect in so doing, remit such rolls to the adjutant-general, with a certificate indorsed thereon, setting forth that a warrant has by them been drawn on their respective treasurers, in favor of the several persons whose names are recorded therein. Thereupon the adjutant-general shall lay the same, together with his roll, prepared under

section seventy, of general, field, and staff officers entitled to pay, before the auditor, and the governor may draw his warrant on the treasury for such sums as may be necessary to pay such officers and reimburse such cities and towns.]

Pay forfeited for deficiency in returns. Not to be received unless full duty is performed, except, &c.  
1846, 218, §§ 1, 9.  
1868, 186, § 1.

SECT. 140. (R.) [The compensation provided in the preceding section shall be forfeited for default in making the returns required by sections one hundred and twenty-two and one hundred and twenty-four; and no person shall receive compensation who does not remain in camp and perform all duties required during the period of encampment; except that a person who once appears and is excused from further duty by reason of sickness, shall be entitled to compensation for the time he is actually engaged in service.]

Personal service requisite to compensation. Excuses not to entitle to.  
1844, 101, § 2.

SECT. 141. (R.) [No officer or soldier in the volunteer militia shall receive the compensation provided in this chapter, unless he personally performs the duties required by law; nor shall excuses granted for absence from or non-performance of military duty entitle the person excused to receive such compensation.]

Inspector-general, expenses.  
R. S. 12, § 128.  
1846, 218, § 12.

SECT. 142. (R.) [The adjutant-general shall present his account for expenses incurred in the performance of his duty as inspector-general to the auditor of accounts for allowance.]

Pay for travel in attending elementary drills. How paid.  
1854, 367, §§ 3, 5.

SECT. 143. (R.) [Each officer and soldier appearing at an elementary drill shall receive for his necessary travel to and from the place of drill five cents a mile not exceeding forty miles in all. The travel of every such person shall annually on or before the first day of October, be certified and returned to the adjutant-general by the commander of his regiment, battalion, or detached company; and the sums due members of companies therefor shall be computed by the adjutant-general on such returns, and be transmitted, paid, remitted, and reimbursed, as provided in section one hundred and thirty-nine. The sums due other officers shall be made up according to such returns, and paid as provided in section one hundred and thirty-seven.]

of detachment on special duty.  
1840, 92, § 27.  
1852, 104, § 4.

SECT. 144. (R.) [When a detachment is ordered on special duty, by the commander-in-chief, or under section one hundred and thirty-four, each member shall receive two dollars a day while in the performance of such duty, and four cents a mile for travel.]

for travel in attending elections.  
1854, 367, § 9.

SECT. 145. (R.) [Officers obliged to go out of the city or town of their residence to attend a military election, shall be allowed five cents a mile, each way, for travel.]

of members of courts martial, &c.

SECT. 146. (R.) [Officers composing courts martial, courts of inquiry, and military boards, and witnesses attending before them, shall receive five cents for every mile they necessarily travel, in going to and returning from the place of trial, and the following sums for each day of attendance:

of president.

The president of a court martial, court of inquiry, or military board, three dollars.

of judge-advocate.

The judge-advocate of the same, four dollars; which shall be in full compensation, also, for all services of preparing papers before, and making copies after, any trial, inquiry, or investigation.

of marshal and members of witnesses.  
1855, 120, § 2.

The marshal and other members of such court or board, two dollars. Each witness attending on such court, or board, one dollar and twenty-five cents.

Fees.

Fees for subpoenas, and service of them, shall be the same as in civil cases.

Pay not allowed guard, &c.  
R. S. 12, § 124.

No allowance shall be made for pay or rations for a military guard, unless such guard is ordered by the officer appointing the court; nor shall the above compensation be made to officers in actual service and receiving pay.]

Relief to soldiers or their families.

SECT. 147. (R.) [If an officer or soldier is wounded, or otherwise disabled, or is killed, or dies of wounds received, while doing military duty,

he, his widow, or children, shall receive from the general court just and reasonable relief.] R. S. 12, § 126.

SECT. 148. (R.) [The militia, while in actual service, shall receive the same pay and rations as the regular troops of the United States; and the rations shall be valued at twenty cents each. Pay of troops in actual service. See § 171.

Every non-commissioned officer and private who provides himself with a uniform and blanket when called into service, shall receive, monthly, in addition to his stated pay, as follows: every sergeant and musician, four dollars; every corporal and private, three dollars and seventy-five cents; and if he does not so provide himself, he shall be allowed, monthly, two dollars and fifty cents. to those who provide uniforms, &c.

When the militia are discharged from actual service, they shall be allowed pay and rations to their respective homes, at the rate of fifteen miles a day.] to those without uniforms. when discharged, &c. R. S. 12, § 127.

SECT. 149. (R.) [All military accounts, including claims against the state for money expended in the transmission of military documents to and from the department of the adjutant-general, unless it is otherwise specially provided by law, shall annually on or before the fifth day of January be transmitted to the adjutant-general and examined, and if found correct, certified by him. They shall then, unless it is otherwise specially provided by law, be presented to the state auditor for allowance, and upon such allowance certified by him to the governor, shall be paid to the persons to whom they are severally due, or to their order, at the treasury of the commonwealth. And no military account shall be certified by the adjutant-general, or allowed by the auditor, unless presented to the adjutant-general for allowance within the time prescribed by law.] Military accounts, &c., how examined, certified, and paid. R. S. 12, § 128. 1849, 55, § 2. 1869, 226. Resolves, 1845, 126. See § 84.

#### EXCUSES.

SECT. 150. (R.) [Excuses for the non-appearance of a soldier shall be made to the commanding officer of his company, or the officer detailed to train and discipline the company, under section thirty, within twenty days after a training or other military duty, from which he has been absent; and on the delinquent's producing satisfactory evidence of his inability to appear, such officer may excuse him; but no such officer shall receive an excuse for non-appearance, after the expiration of the twenty days. No excuse shall avail such soldier, on a prosecution for the recovery of a fine or forfeiture, unless proved to have been made to such officer before the expiration of the twenty days, unless the delinquent satisfies the court or justice before whom the case is tried, that it was not in his power to make such excuse within the time. Such officers shall inform their clerks of all excuses allowed for non-appearance.] Excuses to be made within 20 days, unless, &c. Clerks to be informed of excuses. R. S. 12, §§ 94, 97. 4 Pick. 66. 15 Pick. 1, 7. See § 154.

SECT. 151. (R.) [No commanders of companies shall receive excuses for deficiencies of equipment.] Deficiencies in equipments. R. S. 12, § 95.

SECT. 152. (R.) [When a person is entitled to exemption from military duty, upon presenting evidence of the cause of his exemption to his commanding officer within or before a certain time as provided in sections ten, eleven, and twelve, and omits so to present such evidence, it shall not avail him by way of excuse upon a prosecution for a particular absence or default, unless he makes his excuse to the commanding officer within twenty days after the training, or satisfies the court or justice it was not in his power to make such excuse within the time.] Certain conditional exemptions not to be excuses, unless, &c. R. S. 12, § 96. 11 Mass. 459. 17 Mass. 61.

#### PROSECUTION FOR FINES.

SECT. 153. (R.) [Fines and forfeitures incurred by members of volunteer companies, under their constitutional articles of agreement, may be collected by such persons and disposed of in such manner, for the benefit of said companies, as a majority of the members thereof determine.] Fines of members of volunteer companies. 1837, 240, § 9.

Prosecution for  
fines.

R. S. 12, § 112.  
1 Mass. 448.  
4 Mass. 289, 378,  
556, 670.  
5 Mass. 406.  
11 Mass. 456.  
12 Mass. 271.  
1 Pick. 468.  
3 Pick. 263.  
5 Pick. 189.  
11 Pick. 355.  
15 Pick. 170.  
16 Pick. 84.  
19 Pick. 378, 530.  
21 Pick. 380.  
23 Pick. 54, 208.  
24 Pick. 172.  
1 Met. 148.  
See §§ 80, 96, 117.  
Form of informa-  
tion.

SECT. 154. (R.) [The clerk of each company after the expiration of twenty days, and within forty days after the day of parade or election of officers, shall in those cases where fines are to be collected upon his complaint, make and subscribe an information against the offending soldiers who have not been excused by the commander of the company, under section one hundred and fifty, or who have not, within the twenty days aforesaid, paid to him the forfeitures they have incurred; which information shall be left with some justice of the peace, or filed in some police court, in the county in which the offender resides. Such information shall be in substance as follows:—

To A B, Esq., justice of the peace within and for the county of \_\_\_\_\_, or to the justice of the police court, within and for \_\_\_\_\_

I, the subscriber, clerk of the company commanded by \_\_\_\_\_, do hereby give information against the following person [or persons] who, being duly enrolled in said company, and being duly notified to meet with said company, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, [for inspection or review, election of officers, special duty, or as the case may be,] was guilty of the offences and did incur the forfeitures set against his name:

Names.	Offences.	Forfeitures.	Sums.
A B, non-commissioned officer; C D, private,	For unnecessarily neglecting to appear on said day, . . . . .	has forfeited	
E F, . . . . .	For being deficient of a . . . . . on said day, . . . . .	has forfeited	
G H, . . . . .	For being on said day guilty of coming on to the parade with his arms loaded, . . . . .	has forfeited	
I K, . . . . .	For unnecessarily discharging his musket, [rifle, or pistol,] in going to [or returning from, or on the place of] parade, without the orders of an officer, . . . . .	has forfeited	
L M, . . . . .	For leaving his guard, [section, platoon, or company,] without the leave of an officer, . . . . .	has forfeited	

[And in the same manner, substantially, all other offences are to be set forth against offending non-commissioned officers and privates:]

I, therefore, agreeably to my oath of office, and in compliance with the requisitions of the law in this behalf, request you to issue a summons, directed to the person named in the above information, to appear before you, and show cause, if any he has, why it should not be adjudged that he pay the forfeiture set against his name, for the offence which he is therein alleged to have committed.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

A B, clerk of the company commanded by \_\_\_\_\_

Summons to be  
issued within nine  
months, giving  
seven days' notice.

The justice or court shall file the same; and, upon motion of the clerk, shall, within nine months, and not afterwards, issue a summons to each person informed against, to be served at least seven days before the time appointed for showing cause.

The summons, if issued by a justice of the peace, shall be in substance as follows:—

Form of sum-  
mons issued by a  
justice.

[Seal.] To the sheriff of said \_\_\_\_\_ county, or either of his deputies, or either of the constables of the town of \_\_\_\_\_, in the county aforesaid, greeting:

In the name of the Commonwealth of Massachusetts, you are hereby required to summon C D, of \_\_\_\_\_, in the county aforesaid, to appear before me, E F, one of the justices of the peace for the county aforesaid, at \_\_\_\_\_, in \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, then and there to show cause, if any he has, why judgment should not be rendered, that he has forfeited \_\_\_\_\_ for, [here insert the offence, and the time when and place where it was committed.] Hereof fail not, and make due return of this writ and your doings thereon, unto myself, on or before the said hour of the day of \_\_\_\_\_ in the \_\_\_\_\_ year

Dated at \_\_\_\_\_ aforesaid, the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year

E F, Justice of the Peace.

If issued from a police court, as follows:—



ss.

## THE COMMONWEALTH OF MASSACHUSETTS.

Form of summons by police court.

[Seal.] To the sheriff of the county of \_\_\_\_\_, or either of his deputies, or either of the constables of the town of \_\_\_\_\_ in said county, greeting :

We command you to summon C D, of \_\_\_\_\_ in said county, to appear before our justices of our police court, to be holden at \_\_\_\_\_ within and for our \_\_\_\_\_, on \_\_\_\_\_, then and there to show cause, if any he has, why judgment should not be rendered, that he has forfeited \_\_\_\_\_ for, [here insert the offence, and the time and place where it was committed.] Hereof fail not, and have you there this writ, with your doings thereon.

Witness, W S, Esq., at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

T P, Clerk.

[or, witness my hand and seal at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_]

A B, Justice of said Court.

When the person summoned appears, he may plead that he is not guilty, and give any special matter in evidence.

Defendant may plead not guilty.

Upon the trial of such complaint, made by the clerk of a company, it shall be sufficient for the complainant to prove that he is clerk of the company; for which purpose he shall produce his warrant as a non-commissioned officer, and prove the signature thereto of the colonel or commanding officer of the regiment or battalion, and that at the time of signing such warrant he was reputed to be and acted as such colonel or commanding officer; which shall be prima facie evidence that such complainant was appointed a non-commissioned officer by the captain or commanding officer of such company, and that a legal return of such appointment was made to the colonel or commanding officer of the regiment.

What shall be sufficient for complainant to prove.

He shall then show, upon the back of his warrant, a legal certificate of his appointment as clerk, and qualification as such by taking the oaths required by law. For which purpose he shall prove the signature of the captain or commanding officer of such company, and that he is such captain or commanding officer, by producing his commission as such; but if the clerk is appointed clerk pro tempore, his appointment may be proved by the records of the company.

Complainant to show certificate of appointment and qualification. 5 Pick. 239. 8 Pick. 449. 15 Pick. 448.

He shall then produce the roll of the company, and prove that the defendant resided within the limits of the company and was enrolled or enlisted therein at the time he was notified of such meeting.

to produce roll, and prove enlistment.

He shall then produce the order of the commanding officer of such company to notify the said meeting or meetings thereof, and prove his signature thereto, and that the defendant was legally notified of the time and place of such meeting or meetings.

to produce order to notify meeting.

If it is required by law that the order for such military duty shall in such case be given by any officer superior to the commanding officer of a company, then the orders of such superior officer, and all intermediate orders of officers transmitting the same to the commanding officer of the company shall be proved, and that the persons purporting by said orders to be such officers, are such; for which purpose, it shall be sufficient to produce the transmitted written or printed copies of such orders, and the regimental, battalion, or other last order, transmitting the same to the commanding officer of the company; to prove the signature of the proper officer to such regimental, battalion, or other last order, transmitting the same; and to prove that all the officers above mentioned are reputed to be such officers and act as such.

to prove order when required to be given by superior officer.

The absence or offence of the defendant shall then be proved, to show that he is liable to the fine alleged to be incurred by him; and, in case of absence, the burden of proof shall be upon him to show that his absence was necessary. The evidence above described shall be taken to be prima facie sufficient to support the complaint.

Offence to be proved.

Burden of proof.

When it appears that a document or paper above mentioned can-

Secondary evi-

dence, when received.

Clerk, &c., may be witness.  
4 Pick. 251.  
15 Pick. 170.

Exemptions for infirmity, how proved.  
Certificate of surgeon of regiment, evidence.

Commanding officer may be witness.  
Execution, when issued.

Form of execution.

Amendments. Continuance. When complainant is not liable for costs.

Appeals not allowed, except.  
19 Pick. 376, 530.

Complaints by other officer, how prosecuted.  
R. S. 12, § 112.

Imprisonment on execution.  
R. S. 12, § 113.

not be produced, satisfactory secondary evidence thereof shall be received.

Upon the hearing of such case the testimony of the clerk, or other person who was ordered to notify the whole or part of the company, shall be prima facie evidence of notice to the defendant and that he neglected to appear.

The certificate of the surgeon of the regiment that the defendant was unable to perform military duty at the time of his absence, shall be prima facie evidence that he ought to be excused for a particular absence, if the provisions of section one hundred and fifty have been complied with; but any permanent disability which renders the enrolment of the defendant illegal, or such temporary excuse, may be proved by parol.

The commanding officer of a company may be a witness to prove any fact whatever.

If the defendant makes default, or judgment is rendered against him, and he neglects for two days after to satisfy the same, with legal costs, execution shall be issued therefor; which execution, issued by a justice of the peace, shall be in substance as follows, but if by a police court, shall be so altered as to conform to the summons:—

ss.

#### THE COMMONWEALTH OF MASSACHUSETTS.

[Seal.] To the sheriff of said county, or either of his deputies, or either of the constables of the town of \_\_\_\_\_ in the same county, greeting:

Whereas E L, clerk of the company commanded by \_\_\_\_\_ in said county, on the \_\_\_\_\_ day of \_\_\_\_\_, before J D, Esq., one of our justices of the peace for our county aforesaid, recovered judgment against T P, of \_\_\_\_\_ for the sum of \_\_\_\_\_ fine or forfeiture, and \_\_\_\_\_ costs of prosecution, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of the money of the said T P, or of his goods or chattels, within your precinct, at the value thereof in money, you cause to be levied, paid and satisfied, unto the said E L, the aforesaid sums, being \_\_\_\_\_ in the whole; and also, out of the money, goods and chattels of the said T P, you levy twenty-five cents more for this writ, together with your own fees; and for want of such money, goods, or chattels of said T P, to be by him shown unto you, or found within your precinct, to the acceptance of the said E L, for the aforesaid sums, we command you to take the body of the said T P, and him commit unto our jail in B, and we command the keeper thereof accordingly to receive the said T P into our said jail, and him safely keep, until he pay the full sums above mentioned, with your fees, or that he be discharged by the said E L, or otherwise, by order of law. Hereof fail not, and make return of your doings therein unto our said justice, within twenty days next coming.

Witness our said justice at B, the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand \_\_\_\_\_

J D, Justice of the Peace.

The complaint or summons may be amended in any stage of the proceedings without payment of costs; and the defendant shall be allowed an adjournment or continuance of the case, if justice requires it. The clerk shall not be liable to pay costs to a defendant in a case in which the commanding officer of his company has certified, upon the information of the clerk, his approval of the same. And no appeal shall be allowed from any such judgment, unless the forfeiture adjudged exceeds ten dollars exclusive of costs.

A complaint by any other officer shall be prosecuted in the like manner so far as the same is applicable thereto, the forms being varied accordingly; and he shall prove his authority by producing his commission and other competent evidence which may be necessary.]

SECT. 155. (R.) [No person shall be imprisoned upon an execution issued upon a complaint and judgment described in the preceding section, for a longer time than six days; but shall at the expiration of that time be discharged by the keeper of the jail to which he is committed. The judgment debtor shall remain liable for the amount of the judgment and the costs of imprisonment; and execution for the whole of the same may be sued out against the property of such debtor.]

SECT. 156. (R.) [The clerk of each company shall retain to his own use one-half the forfeiture so collected, and, upon demand, pay the other half to the commander, who shall give his receipt therefor, and expend the same in defraying such expenses of the company as a majority of the commissioned officers thereof judge necessary.]

Money collected for fines, how disposed of.  
R. S. 12, § 114.

# COURTS MARTIAL.

SECT. 157. (R.) [All complaints upon which courts martial are ordered, shall be in writing and signed by the complainant, and shall clearly specify the offence, and the time when and the place where it was committed. No officer shall be tried by court martial for an offence committed more than one year before the complaint, unless his absence or other manifest impediment has prevented a complaint within that time; nor on a charge preferred by a soldier, unless for an offence committed while in the actual service of the state or of the United States, nor unless such charge is preferred before such soldier has left the service.]

Complaints on which courts martial are ordered.  
See § 172.  
Trial must be within a year.  
By whom charges to be preferred.  
R. S. 12, § 115.  
1864, 387, § 7.  
5 Wheat. 22.  
See § 172.

SECT. 158. (R.) [Every officer to be tried by court martial shall be put under arrest. The judge-advocate shall deliver to the accused a copy of the charges against him, and a notice of the time and place of trial, ten days at least before the day of trial; and if he objects and the court is satisfied that he has not received the same, they shall adjourn, so as to allow the time required to elapse, after the delivery of the notice and copies.]

Respondent to be arrested.  
Copy of charges, &c., to be delivered.  
Court may adjourn.  
R. S. 12, § 116.  
See § 172.

SECT. 159. (R.) [Courts martial shall consist of a president, judge-advocate, not more than four nor less than three members, present at the organization of the court, and a marshal; and shall be holden between the first day of December and the last day of May, in the daytime. There shall be only one general and one division court martial, in one division, in one year.

Courts martial, of whom to consist.  
when held.  
how often.  
See § 172.

General courts martial shall be appointed for the trial of all officers above the rank of captain, by the orders of the commander-in-chief, issued to the divisions which in his opinion can most conveniently furnish members for the same; and he shall appoint a president, not below the rank of brigadier-general, and a marshal of said court.

general, by whom appointed, and to try whom.

Division courts martial shall be appointed for the trial of officers of and under the rank of captain, by the orders of each commanding officer of a division, in his own division, issued to the brigades, regiments, battalions, and companies which, in his opinion, can most conveniently furnish members for the same; and he shall appoint a president, of the rank of colonel or lieutenant-colonel, and a marshal.

division, by whom appointed, and to try whom.

Officers shall be detailed to sit upon courts martial, in manner following: major-generals, by the commander-in-chief, from the general roster; brigadier-generals and officers of any divisionary corps, by the commanding officers of divisions, from the division roster; colonels, lieutenant-colonels, and majors, and officers of any company attached to a brigade, by the commanding officers of brigades, from the brigade roster; captains and subalterns, by the commanding officers of regiments, battalions, and other separate corps. And when it appears that an officer detailed or to be detailed is or will be, for some sufficient cause, unable to serve on a court martial, the officer detailing him, having satisfactory evidence thereof, shall certify such inability to the officer ordering the court martial, and shall at the same time detail the officer next in rotation on the roster. No senior officer, or superior in rank to the president, shall be detailed. The officers ordered to detail members shall make returns forthwith to the officer appointing the court, who shall transmit the same to the judge-advocate.

members of, how and by whom detailed.

Provision in case any officer detailed is unable to serve.

No one superior in rank to the president, to be detailed.  
Officers ordered to detail, to make return.

The judge-advocate of each division shall, when ordered, attend general and division courts martial within his division; but when he is prevented by inability or legal impediment, the officer ordering the

Judge-advocate to attend.  
when unable to attend.

court martial shall appoint some person to be judge-advocate to the same.

If president does not attend.

If the officer appointed president does not appear at the opening of the court, the officer highest in rank present shall be president.

If sufficient number of members do not attend, or are not qualified.

When it is found that by reason of absence, challenge, or other cause, the number of members of a general or division court martial, (besides the president,) qualified to act, is less than three, the court shall adjourn for a suitable time; and the president shall forthwith notify the fact to the commanding officer of the division in which such general or division court martial is held; and such commanding officer shall himself detail from the division a number of officers of the same rank as those before detailed, sufficient to complete the court.

If judge-advocate or marshal is absent.

Person acting as judge-advocate to continue during trial.

If no judge-advocate or marshal attends at the opening of the court, the president shall appoint a judge-advocate or marshal, which appointment shall be entered on the record and signed by him. The judge-advocate acting at the commencement of a trial, shall serve during the trial, notwithstanding the attendance or appointment of any other person afterwards.

Officers' rank.

See § 37.  
Court may adjourn, when.  
R. S. 12, § 117.  
Members to be sworn.  
See § 172.

Officers on a court martial shall rank by seniority of commission.

The court may adjourn, when necessary, before a judge-advocate appears and before they are qualified.]

SECT. 160. (R.) [Before a court martial proceeds to the trial of an officer, the judge-advocate shall administer to the president and members, severally, the following oath:—

Oath of president and members.

You, A B, do swear, that without partiality, favor, fear, prejudice, or hope of reward, you will well and truly try the cause now before you, between the commonwealth and the person [or persons, if more than one is accused, in the same complaint,] to be tried; and that you will not divulge the sentence of this court martial, until it shall be approved or disapproved of, and that you will not discover the vote or opinion of a member, unless required to give evidence thereof, as a witness, in due course of law: So help you, God.

And the president shall administer to the judge-advocate the following oath:—

Oath of judge-advocate.

You, A B, do swear, that you will faithfully and impartially discharge your duties as judge-advocate on this occasion, as well to the commonwealth as to the accused; and that you will not on any account at any time divulge the vote or opinion of any member of this court martial, unless required to give evidence thereof, as a witness, in due course of law: So help you, God.

Challenges, how and when made, and by whom tried.

No member shall be challenged by the government or the accused, until the president, members, and judge-advocate, are sworn. Only one member shall be challenged at a time, and the challenge shall be in writing, stating the cause of it. The person challenged shall not vote, but the president and other members shall try whether the challenge is good.

Certain causes of challenge, when waived.  
22 Pick. 501.

Illegality or irregularity in the detail of a member of the court, shall be good cause of challenge by either party; but shall be considered as waived, unless the objection is taken at the time and in the manner aforesaid.

If accused is absent, or withdraws.

If the accused neglects to appear and defend, or refuses to plead, or withdraws in contempt of the court, the court may proceed to trial and judgment, as if he had pleaded not guilty.

Witnesses summoned must appear.  
Penalty.

Persons summoned by the judge-advocate or a justice of the peace, shall appear and give evidence before a court martial, (but the defendant's witnesses shall have their fees first tendered to them,) and the penalties for neglect to appear shall be the same, and the judge-advocate may issue a *capias*, in like manner as in criminal prosecutions.

Before the witnesses testify, they shall be sworn by the judge-advocate in the following form:—

Oath of witnesses.

You, A B, do swear, [or affirm,] that the evidence you shall give, in the cause now in hearing, shall be the truth, the whole truth, and nothing but the truth: So help you, God, [or, This you do under the pains and penalties of perjury, in case the witness affirms.]

When the adjutant-general is complainant for neglect or default in making returns, he shall not be required to be present, and his certificate shall be sufficient prima facie evidence that the return was or was not made, and that a copy of a return is true.

Evidence of default in returns.

Judge-advocates shall be the certifying officers, to authenticate copies of papers and documents used before courts martial, courts of inquiry, or boards of officers, except papers or documents from the adjutant-general's office, which shall be certified by him; but copies may be proved as in other courts.

Copies of documents, &c., how authenticated.

The statement of the complainant and the defence of the accused, and motions, arguments, and objections to the proceedings by either party, and the answers thereto, shall be submitted to the court in writing; the evidence and proceedings in and out of the court, and opinions of the judge-advocate on questions of law arising during the trial, shall be put in writing by him. After the prosecution and defence are concluded, he shall state and sum up the evidence, and give his opinion to the court upon matters of law; which opinion, with the judgment, he shall put in writing.

All proceedings and evidence to be in writing.

When a question is to be decided, the judge-advocate shall receive the vote of each member, beginning with the youngest and proceeding to the eldest. The president shall not vote; and unless two-thirds of the members agree that the accused is guilty, he shall be acquitted. If two-thirds of the members find him to be guilty, he shall be sentenced to be reprimanded in orders, or to forfeit a sum not exceeding two hundred dollars, or to be dismissed from office, — either or all of them; and in the last case, he may be further adjudged to be disqualified from holding any military office during life or a term of years.

Votes, how taken — two-thirds required to convict.

Sentence.

Courts martial may preserve order during their session; and whoever, in such court, behaves in a disorderly or insulting manner, or makes a tumult or disturbance, may be arrested by order of the court, and confined not exceeding twenty-four hours and fined not exceeding five dollars, — either or both. If the fine is not paid, the judge-advocate shall issue a mittimus, forthwith to commit such person to prison in the same manner and with the same effect as upon executions from justices of the peace in cases of prosecutions for non-payment of other military fines and costs.

Courts martial authorized to preserve order.

The record of the trial and judgment, with the papers used therein, or copies thereof, certified by the judge-advocate, shall be authenticated by his certificate and signature, and sealed up and transmitted by him to the officer who ordered the court, who shall annex thereto his approval or disapproval of the same, and the reasons thereof in writing, and transmit the same as soon as may be to the office of the adjutant-general, to be kept and preserved.

Records, how authenticated and transmitted.

Approval or disapproval of sentence.

The judge-advocate shall also make, certify, and transmit the pay roll of the court martial to the same office.

Pay roll.

The officer ordering the court, and the party tried thereat, shall receive, upon request, from the adjutant-general, a copy of the record; the party tried paying a reasonable sum for his copy.

Copies to be furnished.

The judgment of disqualification may, after approval, be reversed in whole or in part, by the commander-in-chief with the advice of the council; but all other parts of the sentence, when approved, shall remain in full force.]

Judgment of disqualification may be reversed.  
R. S. 12, § 118.

SECT. 161. (R.) [Every commissioned officer may be tried by a court martial for the following offences: —

What offences may be tried by court martial.  
R. S. 12, § 119.  
See § 172.

For unmilitary or unofficer-like conduct when on duty;

For neglect of any duty required in this chapter;

For disobedience of orders, or an act contrary to the provisions of this chapter;

For oppression or injury of any under his command;

What offences  
may be tried by  
court martial.

For a combination or attempt to break, resist, or evade, the laws, or lawful orders given to a person, or advising any person so to do;

For insult to a superior officer in the exercise of his office;

For presuming to exercise his command while under arrest, in which case, if guilty, he shall be removed from office;

For neglect or refusal, when commanding officer, to order out the troops under his command, when required by law or ordered by his superior officer;

For excusing, as commanding officer of a company, any person under his command, for deficiency or unnecessary absence, or after the expiration of the time allowed by law;

For neglect or refusal to make a draft or detachment, when legally ordered to do so;

For neglect or refusal to cause prosecutions to be commenced for fines, when it is necessary;

For parading the troops under his command on days of election, contrary to the provisions of section one hundred and nine;

For receiving any fee or gratuity, as surgeon or surgeon's mate, for a certificate of inability to do military duty;

For neglect, when detailed to train and discipline a company, [or] to make complaint for neglect or violation of duty, as provided by law, or for any other neglect for which a commanding officer of the company would be liable;

For neglect or refusal to march, to make a draft, or for disobedience to an order, in case of rebellion or insurrection, as provided in sections one hundred and twenty-nine to one hundred and thirty-two, inclusive, in which case the offender shall be cashiered;

For refusal or neglect to obey a precept or order to call out the militia, or an order issued in obedience thereto, in case of tumult, riot, or other cause, as provided in sections one hundred and thirty-four to one hundred and thirty-six, inclusive, or for advising any officer [of] [or] soldier to do the like; in which cases, the offender shall be cashiered, besides being subject to fine and imprisonment, as provided in section one hundred and thirty-five.]

Fines imposed by  
court martial,  
how prosecuted.  
Costs against  
judge-advocate,  
how paid.  
R. S. 12, §§ 101,  
110.  
1852, 312.  
See §§ 170, 172.

SECT. 162. (R.) [Any fine not exceeding two hundred dollars may be inflicted on any officer, by sentence of a general or division court martial, as a part of, or the whole of, such sentence; and such fines shall be prosecuted by the judge-advocate, or person appointed to act as such at the court martial, in an action of tort, to the use of the commonwealth; and if any judgment for costs is rendered against any judge-advocate in such case, the officer to whom the execution upon such judgment is delivered, shall demand payment of the execution of the treasurer of the county in which such judgment is rendered, and the said treasurer shall pay the same, and it shall be allowed to said county, in the settlement of said treasurer's account with the commonwealth.]

#### BOARDS OF OFFICERS.

Boards of officers  
to settle military  
questions.  
R. S. 12, § 120.  
See § 172.

SECT. 163. (R.) [The commander-in-chief, when in his opinion it is necessary, may call boards of officers for settling military questions, or for other purposes relative to good order and discipline.]

#### GENERAL AND DIVISION COURTS OF INQUIRY.

Courts of in-  
quiry, how  
ordered, &c.  
R. S. 12, § 121.  
See § 172.

SECT. 164. (R.) [General and division courts of inquiry shall consist of three officers and the judge-advocate of the division in which they are held; and they may be ordered and organized in the like manner as courts martial, and, under the same regulations, may examine into the nature of a transaction, imputation, or accusation, made against any officer by an inferior.]

Vacancies shall be filled as in courts martial.

Vacancies.

The judge-advocate shall administer to each of the officers composing a court of inquiry, the following oath:—

You, A B, do swear that you will well and truly examine and inquire into the matter now before you, without fear, favor, partiality, prejudice, or hope of reward: So help you, God.

Oath of president and members.

After which the president shall administer to the judge-advocate the following oath:—

You, A B, do swear that you will impartially record the proceedings of the court, and the evidence to be given in the case now in hearing: So help you, God.

Oath of judge-advocate.

Witnesses shall be summoned in the same manner, take the same oath, and be examined and cross-examined by the parties in the same way, as on trials before courts martial; but the court shall not give their opinions on the merits of the case, unless specially required so to do.

Witnesses.

Judge-advocates shall attend courts of inquiry in their division, in the same manner as they attend courts martial; and special judge-advocates for the court shall be appointed, in the same manner in like cases. The proceedings therein shall be recorded, and, with the papers and documents used therein, authenticated and transmitted, by the judge-advocate, to the officer who ordered the court, in like manner as in courts martial.]

Judge-advocate to attend courts of inquiry.

SECT. 165. (R.) [No officer appointing a court martial, court of inquiry, or board of officers, shall order a guard for the same, unless in his opinion it is necessary for their protection.]

No guard, unless. R. 8. 12, § 122. See § 172.

#### RULES AND ARTICLES FOR GOVERNING THE MILITIA IN ACTUAL SERVICE.

SECT. 166. (R.) [The following rules and articles are established and declared to be in force, for governing the troops and militia of this commonwealth in actual service, in field, camp, or garrison. Sutlers and retainers to an army, drivers, conductors, and all persons receiving pay or hire for services in or with the troops or militia in actual service in the field, camp, or garrison, shall be taken to be soldiers, and governed by these rules and articles.]

Who shall be taken to be soldiers. R. 8. 12, § 187. 1864, 301.

SECT. 167. (R.) [The offenders described in this section shall suffer death, or such punishment as may be inflicted upon them by sentence of a court martial, according to the nature of the offence:—

Offences punished by death or otherwise. 1861, 219, § 6.

Art. i. An officer or soldier who begins, excites, causes, or joins in any meeting or sedition in a company, regiment, party, post, detachment, guard, or body of soldiers, in the service of the commonwealth.

Sedition.

Art. ii. An officer or soldier who, being present at or knowing of such meeting or sedition, does not use his utmost endeavors to suppress the same, or knowing of such intended meeting or sedition, does not give information thereof to his commanding officer.

Not suppressing sedition, nor giving information of it.

Art. iii. An officer or soldier who deserts.

Desertion.

Art. iv. An officer or soldier who advises another officer or soldier to desert.

Advising desertion.

Art. v. An officer or soldier who misbehaves himself before an enemy, runs away, or shamefully abandons a fort, post, or guard, or speaks or does any thing to induce others to do the like at such time.

Misbehaving before an enemy, &c.

Art. vi. An officer or soldier who abandons his post or colors, to plunder.

Abandoning post, &c.

Art. vii. An officer or soldier who makes known the watchword to a person not entitled, according to the rules and discipline of war, to receive it; or who gives a parol or watchword different from what he has received.

Making known or falsifying watchword.

Art. viii. An officer or soldier who forces a safeguard.

Forcing safeguard.

Art. ix. An officer or soldier who knowingly harbors or protects an enemy, or relieves them with money, victuals, arms, or ammunition.

Harboring or relieving an enemy.

Corresponding with an enemy.

Compelling commander to surrender.

Sentence of death.  
R. S. 12, § 188.  
Offences punished by cashiering, &c.  
Using traitorous, &c., words.

Neglecting to march, &c.

Disobedience of orders, &c.

Provocation to fight a duel.

Giving or accepting challenge.

Upbraiding, &c.

Suffering person to pass guard to fight duel, or not arresting such person.

Drunkenness on duty.  
Escaping from arrest.

Behaving scandalously.

Embezzling or committing fraud.

Selling or wasting stores, &c.

Not delivering offender to civil authority.  
R. S. 12, § 189.

Offences punished at discretion of court martial.

Preceding offences by soldiers.

Disrespect to commanding officer.

Disobedience.

Violence to an officer.

*Art. x.* An officer or soldier who, directly or indirectly, holds correspondence with, or gives intelligence to, the enemy.

*Art. xi.* Any officers or soldiers who compel the commander of any garrison, post, fortress, or guard, to surrender or abandon it.

*Art. xii.* No person shall be sentenced to death except by a general court martial, and in cases expressly mentioned in the foregoing articles.]

SECT. 168. (R.) [The offenders described in this section shall be cashiered, in addition to any other punishment which may be lawfully inflicted:

*Art. xiii.* An officer who uses traitorous or contemptuous words against the authority and government of the United States, or the authority, government, or legislature, of the commonwealth.

*Art. xiv.* An officer who refuses or neglects to march to the place of rendezvous, to make a draft, or to obey a lawful order, in case of war, invasion, or insurrection, as provided in sections one hundred and twenty-nine to one hundred and thirty-two, inclusive.

*Art. xv.* An officer who refuses or neglects to obey a precept or order to call out the militia, or an order issued in obedience to such order, contrary to the provisions of sections one hundred and thirty-four to one hundred and thirty-six, inclusive, or shall advise or persuade any other officer or soldier to do the like.

*Art. xvi.* An officer who uses any reproach or provocation to another, in speech, gesture, or writing, to induce him to fight a duel.

*Art. xvii.* An officer who gives or sends a challenge to an officer or soldier to fight a duel, or accepts such challenge when sent to himself, or who is second in a duel, or promoter or carrier of a challenge.

*Art. xviii.* An officer who upbraids another for not sending, or for refusing a challenge.

*Art. xix.* An officer commanding a guard, who knowingly and willingly suffers a person to pass the same in order to fight a duel, or an officer knowing or believing, or having reason to believe, a challenge to be given or accepted, carried, or promoted, by an officer or soldier under his command, who does not immediately arrest and bring him for trial.

*Art. xx.* An officer found drunk on his guard or other duty.

*Art. xxi.* An officer under arrest, who leaves his confinement before he is set at liberty by his commanding or other superior officer, or the officer who confined him.

*Art. xxii.* An officer convicted of behaving in a scandalous or infamous manner.

*Art. xxiii.* An officer, store-keeper, or commissary, embezzling or committing a fraud concerning any property of the commonwealth, or of an officer or soldier, besides being criminally liable for the same.

*Art. xxiv.* An officer selling, or designedly or through neglect, wasting the ammunition, military stores, implements, or other property, of the commonwealth, in his care or possession.

*Art. xxv.* An officer who refuses to deliver over any other officer or soldier to the civil authority, or who shelters or conceals any witnesses, contrary to the provisions of section one hundred and seventy-one.]

SECT. 169. (R.) [The offenders described in this section shall suffer such punishment, according to the nature of the offence, as may be inflicted upon them by sentence of a court martial:—

*Art. xxvi.* A non-commissioned officer or private guilty of the offences described in the last section, for which an officer would be cashiered.

*Art. xxvii.* An officer or soldier who behaves with disrespect or contempt towards the commander-in-chief, the commanding officer of the troops, or his own commanding officer.

*Art. xxviii.* An officer or soldier who disobeys the lawful command of his superior officer.

*Art. xxix.* An officer or soldier who strikes his superior officer, or draws or lifts up any weapon against him, or offers any violence against him in the execution of his office.



*Art. xxx.* An officer or soldier who refuses to obey, or resists, or draws or lifts a weapon against, or offers violence to, an inferior or superior officer of any rank attempting to part or quell a quarrel in his own or any other company, regiment, or body of men, or who does not submit, when arrested by such officer, in such case, by the authority hereby given.

Resisting an officer who attempts to quell a quarrel.

*Art. xxxi.* An officer commanding in quarters, garrisons, or on a march, who does not keep good order, and, to the utmost of his power, redress all abuses and disorders committed by those under his command, or who, upon complaint made to him of any beating, ill treatment, riot, or disquieting of any citizens or subjects of the United States, omits to use means to punish the offender or offenders, and cause reparation to be made to the party injured, so far as the offenders' pay will go.

Not keeping order, redressing abuses, protecting citizens.

*Art. xxxii.* Non-commissioned officers and privates found one mile from the camp, fort, or post, without leave in writing from the commanding officer.

Being one mile from camp, &c.

*Art. xxxiii.* An officer or soldier who is out of his camp, post, or quarters, without leave from his superior officer.

Being absent without leave.

*Art. xxxiv.* A non-commissioned officer or private who does not retire to his quarters or tent, at the beating of the retreat.

Not retiring to quarters.

*Art. xxxv.* An officer or soldier who does not repair at the time fixed, to the place of parade or exercise, or other rendezvous appointed by the commanding officer, unless prevented by sickness or evident necessity, or who goes from guard or such place of rendezvous, without leave from his commanding officer, before he is regularly dismissed or relieved.

Not repairing to rendezvous, unless, &c.

*Art. xxxvi.* A sentinel who is found sleeping on his post, or who leaves it before he is regularly relieved.

Sentinel sleeping, &c.

*Art. xxxvii.* An officer or soldier who occasions false alarms in camp, garrison, or quarters, by discharging firearms, drawing of swords, beating of drums, or by any other means.

Occasioning false alarms.

*Art. xxxviii.* An officer or soldier who, without urgent necessity or leave of his superior officer, leaves his platoon, division, or guard.

Leaving platoon, &c.

*Art. xxxix.* An officer or soldier who does violence, or offers any insult or abuse, to a person who brings provisions or other necessaries to the camp, garrison, or quarters.

Violence to persons bringing provisions.

*Art. xl.* A person who uses menacing words, signs, or gestures, in presence of a court martial then sitting, or causes any disorder or riot to disturb their proceedings.

Disturbing courts martial.

*Art. xli.* An officer or non-commissioned officer commanding a guard or provost marshal, who refuses to receive a prisoner committed to his charge by an officer of the forces of this commonwealth, when a written statement of the charge, signed by such officer, is delivered to him.

Refusing to receive prisoner.

*Art. xlii.* An officer or soldier releasing a prisoner without proper authority, or suffering him to escape.

Releasing prisoner.

*Art. xliii.* Every officer or provost marshal to whom prisoners are committed, who does not within twenty-four hours after, or as soon as he is released from his guard, notify to his and to their commanding officers, their names and crimes, and the names of the officers who committed them.

Not reporting prisoners.

*Art. xliv.* Offenders guilty of crimes not capital, and of disorders and neglects which officers and soldiers may be guilty of to the prejudice of good order and military discipline, though not mentioned in the foregoing articles.

Crimes not capital and not specified.

*Art. xlv.* Officers who unnecessarily absent themselves from divine service, or behave indecently or irreverently at any place of worship, shall, upon judgment of a court martial, be publicly and severely reprimanded by the president.]

Officers absent from divine service, &c.  
R. S. 12, § 140.

SECT. 170. (R.) [Officers and soldiers shall be subject to the following fines:—

Fines.

Soldiers absent, &c., during divine service.

*Art. xvi.* A non-commissioned officer or private, absenting himself from, or behaving indecently and irreverently at, divine worship, not exceeding one dollar, and for each offence after the first to be confined twenty-four hours in addition thereto.

Profanity by officers.

*Art. xlvii.* An officer guilty of profane cursing and swearing, for each offence, two dollars.

Profanity by soldiers.

*Art. xlviii.* A non-commissioned officer or private guilty of profane cursing and swearing, for each offence, not exceeding one dollar.

Fines by court martial.

*Art. xlix.* A fine, not exceeding two hundred dollars, may be inflicted by a court martial, as a part or the whole of the sentence; and so much of the same as cannot be stopped out of the pay of the offender, shall be recovered as provided in section one hundred and sixty-two.

Fines stopped out of pay.  
R. S. 12, § 141.

*Art. l.* All fines may be stopped out of the pay of the offender; and the field officers of every regiment may appoint some suitable person, in the regiment, to receive all fines incurred for any breach of these articles, and may direct the same to be properly applied to the relief of the sick, wounded, or needy soldiers of such regiment; and the receiver shall account to such officers for all sums so received.]

General rules.

SECT. 171. (R.) [The following rules shall also be observed in actual service:—

Officer wronged by colonel.

*Art. li.* If an officer thinks himself wronged by his colonel, or the commanding officer of his regiment or battalion, and is, upon due application made to him, refused redress, he may complain to the commander-in-chief, or commander of the forces in service, who shall examine the case and see that justice is done.

Officer or soldier wronged by captain.

*Art. lii.* If an inferior officer or soldier thinks himself wronged by his captain, or the commanding officer of his company, he may complain to the commanding officer of his regiment or battalion, who shall convene a regimental court martial, for the purpose of doing justice to the complainant; from which either party may appeal to a general court martial; but if the appeal is vexatious, the party appealing may be punished at the discretion of the court martial.

Public stores secured.

*Art. liii.* Public stores taken from the enemy shall be secured to the use of the commonwealth.

Oldest officer to command, without regard to corps.  
See § 37.

*Art. liv.* When different corps of the same or different arms of foot, or horse and foot, join or do duty together upon marches, guards, or in quarters, or camp, the oldest officer by commission shall command, without respect to corps, and give the orders necessary to the service.

Offenders against citizens to be delivered to civil authorities.

*Art. lv.* When an officer or soldier is accused of a capital crime, or of having used violence, or committed any offence against the person or property of any citizen or subject of the United States, such as is punishable by the known laws of the United States, or of the state where it is committed, the commanding officer and the officers of every army, detachment, regiment, battalion, or company, to which the accused belongs, upon application duly made by or in behalf of the party injured, shall use their utmost endeavors to deliver over the accused to the civil magistrate, and to aid the officers of justice in apprehending and securing the accused to bring him to trial. And if any officer wilfully neglects or refuses, upon such application, to deliver over the accused, or to aid the officers of justice, or detains, shelters, or conceals, any witnesses in a case, he shall be punished as provided in section one hundred and sixty-eight.

Property of deceased soldiers secured.

*Art. lvi.* When an officer or soldier dies or is killed in the service of the commonwealth, his commanding officer shall order some suitable person to secure all his property and effects, and to take an inventory of them in the presence of two commissioned officers, who shall attest the same; and to preserve said effects and inventory until they are demanded by his legal representative.

Pay and rations.  
R. S. 12, § 142.

*Art. lvii.* The pay and rations of troops in actual service shall be such as provided by section one hundred and forty-eight.]

SECT. 172. (R.) [Courts martial in actual service shall be ordered and held, and shall proceed, in the same manner as the militia courts martial provided in sections one hundred and fifty-seven to one hundred and sixty-five, inclusive, except so far as the same are repugnant to the following regulations:—

Art. lviii. When an officer or soldier commits an offence deserving punishment, if an officer, he shall be put under arrest and confined to his quarters, and his sword shall be taken from him by the commanding officer; and if a non-commissioned officer or soldier, he shall be imprisoned until he can be tried by a court martial or discharged by proper authority.

Courts martial in actual service, &c.

Arrests.

Art. lix. No officer or soldier under arrest and imprisoned shall continue in confinement more than eight days, or until a court martial can be conveniently assembled.

Imprisonment before trial.

Art. lx. A general court martial may be ordered by the general commanding any separate army in the field, garrison, or quarters, as well as by the commander-in-chief; and a division court martial by a major-general, or by a commanding officer of a division, as organized for field service.

General and division courts martial, by whom ordered.

Art. lxi. A general court martial in actual service shall consist of not less than thirteen commissioned officers; and the president shall not be the commander-in-chief, nor the commanding officer of the army, detachment, or garrison, where the offender is tried, nor under the rank of a field officer.

Of whom general court martial shall consist.

Art. lxii. Division courts martial shall consist of not less than nine, and regimental courts martial, of not less than five officers, when that number can be conveniently assembled, nor less than three in any case.

Division and regimental courts martial.

Art. lxiii. Regimental courts martial shall not have the power to try commissioned officers, but they shall be tried by general or division courts martial, according to their rank; nor shall they inflict any punishment heavier than a fine equal to one month's pay, or than one month's imprisonment.

Power of regimental.

Art. lxiv. An officer commanding a fort, castle, quarters, or a body of men composed of detachments from different regiments, or of independent companies, may assemble courts martial like regimental courts martial, and with the same powers.

Post and detachment court martial.

Art. lxv. When the matters to be examined are peculiar to the troops of a particular arm, the courts martial shall be composed, as far as possible, of officers of that arm.

Courts martial in particular corps.

Art. lxvi. No officer below the rank of captain shall sit at the trial of an officer of the rank of field officer.

Rank of members of court martial.

Art. lxvii. No court martial shall sit except between the hours of eight in the morning and three in the afternoon, except in cases which require an immediate example.

Time of holding court martial.

Art. lxviii. Members of courts martial, belonging to different corps shall take rank according to seniority.

Rank in court martial. See § 37.

Art. lxix. The judge-advocate of the division in which the offence was committed, or some other judge-advocate, or, in their absence, some suitable person, shall be appointed to be judge-advocate of the court, by the officer ordering the same.

Judge-advocate.

Art. lxx. The judge-advocate shall administer to the president and each member of the court, the following oath:—

You swear, that you will well and truly try and determine, according to your evidence, the matter now before you, between the Commonwealth of Massachusetts and the prisoner to be tried; that you will duly administer justice, according to the rules and articles for governing the troops of the said commonwealth, without partiality, favor, or affection, and if any doubt shall arise, which is not explained by the said articles, according to your conscience, the best of your understanding, and the custom of war in like cases; that you will not divulge the sentence of the court until it shall be approved by the commanding officer; and that you will not, upon any account, at any

Oath of president and members.

time, disclose or discover the vote or opinion of any particular member of the court martial, unless required, by a court of justice, to give evidence as a witness, in due course of law: So help you, God.

The president shall then administer the following oath to the judge-advocate:—

Oath of judge-advocate.

You, A B, do swear, that you will faithfully and impartially discharge your duties on this occasion, to the commonwealth as well as to the accused, and that you will not, upon any account, at any time whatsoever, divulge any vote or opinion of any member of this court martial, unless required, by a court of justice, to give evidence thereof as a witness: So help you, God.

Witnesses refusing to appear and testify.

*Art. lxxi.* Persons called to give evidence before a court martial, who do not appear, or who refuse to testify, without legal excuse, shall be punished at the discretion of such court martial.

Oath of witnesses.

*Art. lxxii.* Witnesses shall be examined upon oath administered by the judge-advocate, in the form prescribed by section one hundred and sixty.

Votes in court martial; two-thirds necessary to capital sentence.

*Art. lxxiii.* Members of a court martial shall vote, beginning with the youngest, and shall give judgment by a majority of voices; but no sentence of death shall be given, unless two-thirds of the members concur therein.

Proceedings to be transmitted to commanding officer.

*Art. lxxiv.* No sentence of a court martial shall be carried into execution, until the proceedings and evidence, documents, papers, and all matters in and concerning the same, are transmitted in the manner provided in section one hundred and sixty, to the commanding officer of the army, station, camp, or post, where the court martial is held, and he approves the same, and orders it to be carried into execution.

Pay may be suspended.

*Art. lxxv.* When a court martial sentences an officer to be suspended, it may also suspend his pay and emoluments.

Pardon and mitigation of punishment.  
R. S. 12, § 143.

*Art. lxxvi.* Every officer having power to order a general court martial, may pardon or mitigate any sentence of the court, except sentence of death and cashiering; and he may suspend the execution of these, until the commander-in-chief is informed thereof; and he with the advice and consent of the council, may pardon or mitigate the sentence.]

Construction of "soldier" and "battalion."  
R. S. 12, §§ 102, 144.

SECT. 173. (R.) [In this chapter, the word "soldier" includes company musicians and all persons in the volunteer or enrolled militia, except commissioned officers; and the word "battalion" may include squadron.]

Penalty on civil officers.  
1840, 92, § 10.

SECT. 174. (R.) [Civil officers named in this chapter, neglecting or refusing to obey its provisions, shall, except as otherwise specially provided, forfeit not less than twenty nor more than five hundred dollars.]

"Selectmen" to include "mayor and aldermen."  
R. S. 12, § 145.

SECT. 175. (R.) [The provisions of this chapter concerning the powers and duties of the selectmen of towns, shall be construed to include the mayor and aldermen of any city.]

## TITLE V.

### OF CERTAIN STATE OFFICERS AND MATTERS OF FINANCE.

CHAPTER 14. — Of certain State Officers.

CHAPTER 15. — Of the Auditor, Treasurer, Land Agent, and Matters of Finance.

CHAPTER 16. — Of the State Board of Agriculture.

## CHAPTER 14.

### OF CERTAIN STATE OFFICERS.

#### GOVERNOR, LIEUTENANT-GOVERNOR, AND COUNCILLORS.

##### SECTION

1. Salary of governor.
2. Compensation of Lieutenant-governor and councillors.

##### SECRETARY.

2. Secretary, salary of, &c.
4. clerks of, and their salaries. Messenger.
5. When secretary is disabled, &c., deputies may act.
6. Secretary to be keeper of state seal. Certified copies to be evidence.
7. to give certificates for release of impressed seamen.
8. shall issue passports to citizens of any color.
9. to furnish blanks to certain officers.
10. returns to, of moneys received by certain officers, &c.
11. Clerks of courts to make returns of criminal cases to secretary.
12. Trial justices, &c., to make like returns.
13. Details of returns, under two preceding sections.
14. Secretary to prepare full abstracts of returns.
15. Penalty on officers for neglect.

##### ATTORNEY-GENERAL AND DISTRICT-ATTORNEYS.

15. Attorney-general, salary of, and clerk hire.
17. to appear for commonwealth in S. J. C., &c.
18. to file informations in certain cases.
19. to advise and assist district-attorneys in certain cases.
20. to enforce application of funds for public charities, and prosecute corporations, &c.
21. to attend sessions of legislature, and give opinions if required, &c.
22. to consult and advise with secretary, treasurer, &c.
23. to make annual reports to legislature.
24. to receive money for contingent expenses in civil actions, &c.

##### SECTION

25. In absence of attorney-general, or district-attorney, court may appoint, &c.
26. Prosecuting officer not to receive fees of prosecutors, nor be attorney in case, &c.
27. Attorney-general to account for fees.
28. Districts for administration of criminal law.
29. District-attorneys, salaries.
30. vacancies in office of, how filled.
31. general duties of.
32. Assistant district-attorney for Suffolk.
33. District-attorneys may interchange duties.

##### NOTARIES PUBLIC.

34. Notaries may administer oaths.
35. on death of, their records to be deposited in office of clerk of the courts.
36. Penalty for neglect in case of resignation, &c.
37. on executors of notaries for neglect.
38. Records of notaries, penalty for destroying, &c.
39. clerks of courts to receive and take charge of records.

##### COMMISSIONERS, &c., TO ADMINISTER OATHS TO PUBLIC OFFICERS.

40. Commissioners, &c., to administer oaths to public officers.

##### COMMISSIONERS TO TAKE DEPOSITIONS, &c., IN OTHER STATES.

41. Commissioners in other states.
42. to be sworn, file signature and impression of seal, &c., with secretary.
43. powers and duties of.
44. secretary to furnish forms to.

##### COMMISSIONERS TO TAKE ACKNOWLEDGMENT OF DEEDS, &c., IN FOREIGN COUNTRIES.

45. Commissioners in foreign countries.
46. to be sworn, &c.
47. powers and duties of.

## GUARDIANS AND TREASURERS OF INDIANS.

SECTION  
48. Guardians, &c., of Indians, to have accounts approved — may be removed, &c.

## SERGEANT-AT-ARMS.

49. Sergeant-at-arms, how appointed, removed, &c.  
50. salary and bond of  
51, 52. general duties of  
53. to preserve state house, &c., from injury.  
54. to appoint door-keepers and assistants, subject, &c.  
55. Watchmen, appointment of.  
56, 57, 58. duties of.

## SECTION

59. Watchmen, salaries of.  
60. Appointment of firemen.  
61. Sergeant-at-arms, &c., to receive no fee.

## COMMISSIONERS ON REPAIRS OF THE STATE HOUSE, &amp;c.

62. Commissioners on state house to have charge of appropriations, &c.

## MESSENGER TO THE GOVERNOR AND COUNCIL.

63. Messenger and assistant, appointment and salaries of  
64. duties of.

## GOVERNOR, LIEUTENANT-GOVERNOR, AND COUNCILLORS.

Governor.  
R. S. 13, § 2.  
1854, 308, § 1.  
See Ch. 15, § 36.  
See 1864, 240.  
Lieutenant-governor and councillors.  
1858, 78, §§ 1, 2, 3, 4.  
1859, 7.  
(R.) *Repeal and substitute.*  
1872, 328.

SECTION 1. The governor shall receive out of the treasury a salary of thirty-five hundred dollars a year, and shall be entitled to no fees or perquisites of office.

SECT. 2. (R.) [At the close of each session of the council, the lieutenant-governor and councillors shall be paid as follows: for attendance at the regular session held during the annual session of the legislature, the lieutenant-governor, six hundred dollars, and each councillor, three hundred dollars; for attendance at each subsequent session, the lieutenant-governor, six dollars a day, and each councillor, three dollars a day; and for travel once in each session, one dollar for every five miles from their several places of abode.]

## SECRETARY.

Salary of, &c.  
R. S. 13, § 9.  
1854, 131, § 1.  
1859, 221, § 1.  
See Ch. 15, § 36;  
Ch. 157, § 12.

SECT. 3. The secretary of the commonwealth shall receive a salary of two thousand dollars a year. He shall exhibit to the governor and council a quarterly return, under oath, of all fees of office received by him, and pay the same into the treasury.

See 1862, 109, § 4. 1863, 231, § 4. 1870, 380.

## Clerks.

SECT. 4. He may employ in his office two permanent clerks, the first at a salary of fifteen hundred dollars a year, and the second at a salary of fourteen hundred dollars a year; and such additional clerical assistance as may be necessary for the despatch of public business, at a salary not exceeding eleven hundred dollars a year for each person employed. He may also employ a messenger at a salary of eight hundred dollars a year.

1857, 269, § 1. 1859, 133, 269. See Ch. 15, § 36. See 1865, 247, § 5. 1866, 298. 1870, 317.

When deputies may act.  
R. S. 13, § 8.  
Amend. const.  
art. 17.

SECT. 5. When the secretary by reason of sickness, absence, or other cause, is disabled from executing the duties of his office, his deputies shall execute the same until such disability is removed, or a secretary is chosen or appointed as provided by the constitution.

Secretary to keep state seal.  
Certified copies to be evidence.  
R. S. 12, § 5.

SECT. 6. The secretary shall have the custody of the state seal; and copies of records and papers in his office, certified by him and authenticated by the state seal, shall be evidence in like manner as the originals.

to give certificates to release seamen.  
R. S. 13, § 10.

SECT. 7. He shall without charge give any certificates that may be necessary to procure the release of American seamen impressed on board of the ships of a foreign nation.

to issue passports.  
1857, 224.  
(R.) *Repealed*  
1869, 366.

SECT. 8. (R.) [He shall issue to any citizen of this state, of whatever color, who may apply therefor, a passport or certificate under the state seal setting forth the age and general description of the applicant, and that he is a citizen of the Commonwealth of Massachusetts.]

to furnish blanks.  
1851, 216, § 1.  
1852, 289, § 4.

SECT. 9. He shall annually in September furnish to the officers mentioned in the three following sections blank forms of the returns required by said sections, with the three following sections printed thereon.

SECT. 10. Justices of police courts, trial justices, clerks of courts,

1873 c. 377  
§ 8

registers of probate and insolvency, and other officers receiving costs, fees, fines, forfeitures, or other moneys, which they are required to pay or account for to the treasurer of the commonwealth, treasurers of counties, or other public authority, shall, on or before the fifteenth day of October annually, return to the secretary under oath a true account of all such moneys received by them by virtue of their office, for the year ending on the last day of the preceding month, stating what disposition has been made thereof. As soon as the returns are received, the secretary shall transmit them to the auditor, who shall examine and report upon the same to the legislature.

Returns to secretary of moneys received by certain officers, &c.  
1861, 216, § 1.  
1862, 289, § 2.  
1867, 46.  
1868, 46.  
1868, 155, § 2.  
1869, 193, 201.

SECT. 11. Clerks of courts shall annually, on or before the fifteenth day of October, make a return to the secretary, in relation to all criminal cases commenced before the grand jury, which have been pending in their several counties during the year ending on the last day of the preceding month, and a like return of all criminal cases coming to their several courts by appeal from police courts and trial justices, and so pending.

Clerks of courts to make return of criminal cases to secretary.

SECT. 12. Trial justices, and the clerks, or where there are no clerks the justices, of police courts, shall annually, at the time and for the period mentioned in the preceding section, make a like return of all criminal cases in which such justices or courts have exercised final jurisdiction, and of all such cases in which they have exercised jurisdiction not final.

Trial justices, &c., to make like returns.

SECT. 13. The returns under the two preceding sections shall specify, as far as applicable, the following details: Number of prosecutions pending at the beginning of the year — Number on file — Number commenced within the year — Pending cases disposed of within the year — Bills found — No bills — Placed on file — On file at end of year — Pending at end of year — Plea guilty — Plea *nolo contendere* — Plea not guilty — Verdict guilty — Verdict not guilty — Disagreement of jury — Number of sentences — To state prison — To jail or house of correction — To almshouse — To state reform school — Fine and imprisonment — Fine — *Nol. pros'd* or discharged on payment of satisfaction — *Nol. pros'd* or quashed for informality — Carried to supreme judicial court — Defaulted before trial — Defaulted after verdict — Not arrested — Costs accrued within the year — Costs of the year paid — Costs of former years paid. In said returns offences shall be classified as follows: Against the person feloniously — Against the person not feloniously — Against property — Against the currency, and criminal frauds — Against public justice — Against the public peace — Against chastity, decency, and morality — Against public policy — Other offences.

Details of return under two preceding sections.

SECT. 14. From said returns, the secretary shall annually prepare full and complete abstracts and tabular statements of the criminal business of each county and of the commonwealth for the year next preceding, (R.) [and append the same to the annual report of the attorney-general.]

Secretary to prepare abstract of returns.  
(R.) Repealed  
1870, 274.

SECT. 15. Any officer who neglects to make the returns required of him by sections ten, eleven, and twelve, shall forfeit two hundred dollars.

Penalty.  
1861, 216, § 2.  
1862, 289, § 3.

#### ATTORNEY-GENERAL AND DISTRICT-ATTORNEYS.

SECT. 16. The attorney-general shall receive a salary of twenty-five hundred dollars a year, and a sum not exceeding one thousand dollars annually for such clerical assistance as the business of his office may require.

Attorney-general, salary of.  
1849, 196, § 12.  
Resolve, 1854, 60, 173c. 257.  
See Ch. 15, § 36.  
See 1866, 236, § 2.  
1868, 83.  
to appear for the commonwealth, &c.  
1849, 196, §§ 2, 3.  
3 Ch. 48.  
See 1866, 233, § 2.  
1867, 264, § 3.

SECT. 17. He shall appear for the commonwealth, in the supreme judicial court, when held by three or more justices in all, prosecutions for crimes punishable with death; and in the trial and argument, in said court, of all causes, criminal or civil, in which the commonwealth

is a party or interested; and in such causes in any court or tribunal, when required by the governor or either branch of the legislature.

SECT. 18. He may when in his judgment the interest of the state requires it, file and prosecute informations, or other process, against persons who intrude on the lands, rights, or property, of the commonwealth, or commit or erect any nuisance thereon.

SECT. 19. He shall consult with and advise the district-attorneys, in matters relating to the duties of their offices; and when in his judgment the interest of the state requires it, shall assist them by attending the grand jury in the examination of any case in which the party accused is charged with a capital offence.

SECT. 20. He shall enforce the due application of funds given or appropriated to public charities within the state, prevent breaches of trust in the administration thereof, and when necessary, shall prosecute corporations which fail to make to the legislature the returns required by law.

SECT. 21. He shall, when required by either branch of the legislature, attend during their sessions, and give his aid and advice in the arrangement and preparation of legislative documents and business; and shall give his opinion upon questions of law submitted to him by either branch thereof, or by the governor and council.

SECT. 22. He shall, when required by the secretary, treasurer, adjutant-general, auditor, or land agent, consult and advise with them respectively, on questions of law relating to their official business.

SECT. 23. He shall annually make a report to the legislature of the cases argued, tried, or conducted, by him in the supreme judicial and superior court during the preceding year, with such other information in relation to the criminal laws, and such observations and statements, as in his opinion the criminal jurisprudence and the proper and economical administration of the criminal law warrant and require.

SECT. 24. On his representation, the governor with the advice and consent of the council may draw his warrant on the treasury to an amount not exceeding three hundred dollars in one year, for the contingent expenses of civil actions in which the commonwealth is a party or has an interest, for which sum he shall annually in October account to the governor and council; and he shall state the amount so expended in his annual report to the legislature.

SECT. 25. The supreme judicial court and the superior court may at any term, in the absence of the attorney-general and district-attorney, appoint some suitable person to perform the duties by law required of them.

SECT. 26. No prosecuting officer shall receive any fee or reward from, or in behalf of, a prosecutor, for services in any prosecution or business to which it is his official duty to attend; nor be concerned as counsel or attorney for either party, in a civil action depending upon the same state of facts.

SECT. 27. The attorney-general and the district attorneys shall severally account with the treasurer of the commonwealth for all fees, bills of cost, and moneys, received by them by virtue of their offices.

SECT. 28. For the administration of the criminal law the county of Suffolk shall constitute the Suffolk District; the county of Middlesex, the Northern District; the county of Essex, the Eastern District; the counties of Norfolk and Plymouth, the South-eastern District; the counties of Bristol, Barnstable, Nantucket, and the county of Dukes County, the Southern District; the county of Worcester, the Middle District; the counties of Berkshire and Hampden, the Western District; and the counties of Franklin and Hampshire, the North-western District; for each of which there shall be a district-attorney.

SECT. 29. Annual salaries shall be paid out of the treasury to the district-attorneys for the several districts as follows: For the Suffolk

Attorney-general to file informations in certain cases.  
1849, 186, § 9.

to advise district-attorneys.  
1849, 186, § 4.  
1860, 46, § 1.

to enforce application of funds for public charities, &c.  
1849, 186, § 8.  
5 Cush. 383.  
104 Mass. 244.  
106 Mass. 579.  
to attend sessions of legislature and give opinions, &c.  
1849, 186, § 6.

to advise, &c.  
1849, 186, § 7.  
1868, 85.  
1869, 91.  
See 1862, 228, § 12.

to make annual reports to legislature.  
1849, 186, § 4.  
See Ch. 4, § 10.

to draw money for expenses in civil actions, &c.  
1869, 28, § 1.

when court may appoint.  
R. S. 18, § 40.  
1869, 196.  
4 Gray, 147.  
8 Gray, 501.  
Prosecuting officers not to receive fees, &c.  
R. S. 18, § 46.  
4 Gray, 147.

Attorney-general, &c., to account for fees.  
R. S. 18, § 45.

Districts for administration of criminal law.  
R. S. 18, §§ 24, 25.  
1848, 18, § 1.  
1862, 196.  
1866, 275.

District-attorneys, salaries of.

B. 1871-1894  
+ -  
1871-1894



District, three thousand dollars; for the Northern, Eastern, Southern, Middle, South-eastern, and Western Districts, twelve hundred dollars each; and for the North-western District, eight hundred dollars; which shall be in full for all services rendered by them as district-attorneys.

SECT. 30. When a vacancy occurs in the office of district-attorney, the governor with the advice and consent of the council may appoint a suitable person to fill such vacancy, who shall hold the office until the next annual election, or until another is chosen in his stead.

SECT. 31. The district-attorneys within their respective districts shall appear for the commonwealth in the supreme judicial court and superior court in all cases, criminal or civil, in which the commonwealth is a party or interested; shall aid the attorney-general in the duties required of him, and perform all the duties which he is authorized to perform, when he is not required to do the same personally; but the attorney-general when present shall have the direction and management of such prosecutions and suits.

SECT. 32. The governor with the advice and consent of the council shall appoint an assistant district-attorney for the Suffolk district, who under the direction of the attorney in said district, shall assist him in the performance of his official duties, and who shall receive, out of the treasury, an annual salary of eighteen hundred dollars.

SECT. 33. The district-attorneys may, with reference to their mutual accommodation, interchange official duties, so as to insure a punctual discharge thereof.

#### NOTARIES PUBLIC.

[See 1862, 109, § 1; 1865, 221; 1867, 260.]

SECT. 34. Notaries public shall have the same authority to administer oaths as justices of the peace.

SECT. 35. On the death, resignation, or removal from office, of a notary public, his records, together with his official papers, shall be deposited in the office of the clerk of the courts within the county in which he resided, or in the county of Suffolk, in the office of the clerk of the superior court for civil business.

SECT. 36. A notary public who on his resignation or removal from office, neglects for three months so to deposit his records and official papers, shall forfeit a sum not exceeding five hundred dollars.

SECT. 37. If the executor or administrator of a deceased notary public neglects for three months after his acceptance of such appointment, so to deposit in the clerk's office the records and official papers of the deceased which shall come into his hands, he shall forfeit a sum not exceeding five hundred dollars.

SECT. 38. Whoever knowingly destroys, defaces, or conceals, the records or official papers of a notary public, shall forfeit a sum not exceeding one thousand dollars and be liable in damages to the party injured.

SECT. 39. The several clerks of the superior court shall receive and safely keep the records and official papers of notaries which are deposited in their offices; shall make and certify copies thereof, for which they shall be paid the same fees that the notary would have been entitled to, and copies thus certified shall have the same effect as if certified by him.

#### COMMISSIONERS, &c., TO ADMINISTER OATHS TO PUBLIC OFFICERS.

[See 1862, 109; 1867, 126, § 4.]

SECT. 40. The governor, with the advice and consent of the council, shall appoint a suitable number of commissioners to administer to public officers the oaths required by the constitution; and all public officers, when provision is made by the constitution

1865, 228.  
1868, 111, § 1.  
1869, 216.  
See Ch. 15, § 38.  
See 1860, 191, § 9.  
1868, 4.  
1870, 361, § 1.  
1872, 362.  
Vacancies in office of district-attorney.  
1866, 173, § 8.

General duties of district-attorneys.  
R. S. 13, § 38.  
1869, 196.  
8 Cush. 48.  
See 1862, 222, § 12.  
1869, 228, § 2.  
9 Gray, 218.  
15 Gray, 447.

Assistant-attorney in Suffolk.  
1866, 67.  
See Ch. 15, § 38.  
See 1868, 4.  
1869, 373.  
1870, 361, § 2.  
1872, 362.  
District-attorneys may interchange.  
R. S. 13, § 39.  
8 Gray, 490.

Notaries may administer oaths.  
1861, 29.

When records to be deposited in clerk's office.  
R. S. 13, § 47.  
1865, 449.  
1869, 196.

penalty.  
R. S. 13, § 48.

on executors of notaries.  
R. S. 13, § 49.

for destroying records of.  
R. S. 13, § 50.

Clerks to take charge of and give copies, &c.  
R. S. 13, §§ 51, 52.  
1869, 196.

Commissioners to administer oaths to public officers.  
R. S. 13, § 57.

18/3 c. 278  
1874, 394 § 2  
1875, 12

1874, 164

1873 c. 171

or laws, may take and subscribe such oaths, before the governor, lieutenant-governor, two members of the council, or two such commissioners.

#### COMMISSIONERS TO TAKE DEPOSITIONS, &c., IN OTHER STATES.

[See 1862, 76, 109.]

Commissioners  
in other states.  
R. S. 18, § 53.  
1864, 17, § 1.

SECT. 41. The governor with the advice and consent of the council may appoint in each of the states and territories of the United States, one or more commissioners, who with those now appointed, shall hold their offices three years from the date of their respective appointments, unless sooner removed by the governor.

to be sworn,  
file signature,  
impression of  
seal, &c., with  
secretary.  
R. S. 18, § 56.  
1864, 17, § 2.

1873 c. 11

SECT. 42. Every such commissioner shall within three months from his appointment take and subscribe an oath or affirmation before a justice of the peace or other magistrate of the city or county where he resides, faithfully to discharge the duties of his office, shall cause to be prepared an official seal in which shall be designated his name, the words "Commissioner for Massachusetts," and the name of the state or territory and city or county where he resides; an impression of which seal, together with his oath of office and signature, shall be forthwith transmitted to, and filed in, the office of the secretary of this commonwealth.

powers and  
duties of.  
R. S. 18, §§ 54,  
55.  
1864, 17, § 3.

SECT. 43. He may, in the state or territory for which he is appointed, administer oaths, take depositions, affidavits, acknowledgments of deeds and other instruments, to be used or recorded in this state, and the proof of such deeds, when the grantor refuses to acknowledge the same, in like manner as justices of the peace may take the proof thereof. All oaths, depositions, affidavits, and proofs, so administered or taken and certified by him under his official seal, shall be as effectual as if administered or taken and certified by a justice of the peace in this state.

Secretary to fur-  
nish forms.  
1864, 17, § 4.

SECT. 44. The secretary shall forward to each commissioner instructions and forms prepared by him in conformity to law, with a copy of the three preceding sections.

#### COMMISSIONERS TO TAKE ACKNOWLEDGMENT OF DEEDS, &c., IN FOREIGN COUNTRIES.

Commissioners in  
foreign countries,  
&c.  
1866, 268, § 1.

SECT. 45. The governor may appoint in every foreign country one or more commissioners, who with those now appointed shall hold their offices during the pleasure of the governor.

to be sworn,  
&c.  
1866, 268, § 2.

SECT. 46. Every commissioner, before performing any duty of his office, shall take and subscribe an oath or affirmation before a judge or clerk of one of the courts of record of the state, kingdom, or country, in which he resides, faithfully to discharge the duties of his office under and by virtue of the laws of the commonwealth of Massachusetts; which, with a description of his seal of office, and his signature, shall be filed in the office of the secretary of this commonwealth.

powers and  
duties of.  
1866, 268, §§ 1,  
2, 3.

SECT. 47. Such commissioner may, according to the laws of this state, take the acknowledgment and proof of the execution of any deed, conveyance, or lease, of lands, lying in this state, or of any contract, or letter of attorney, under seal or not, to be used or recorded in this state; administer oaths, and take depositions to be used in the courts of this state either under a commission from a court, by consent of parties, or on legal notice given to the opposite party. An acknowledgment or proof so taken and certified by him under his official seal, and annexed to or indorsed on the instrument, and any such oath or deposition administered or taken and certified by him, shall have the same force and effect as if done by any officer authorized to perform such acts in this state.

GUARDIANS AND TREASURERS OF INDIANS.

SECT. 48. Guardians and treasurers of Indians appointed under the laws of this state, shall before sending their accounts to the auditor have them approved by the judge of the probate court for the county in which they respectively reside.

Such guardians and treasurers may be removed by the governor and council for just cause, and others appointed in their places.

Guardians, &c.,  
of Indians.  
1823, 114.  
1846, 216.  
1850, 141.  
1853, 189.  
Resolves,  
1814, 31.  
1828, 78.  
1829, 62.  
1852, 86.

SERGEANT-AT-ARMS.

SECT. 49. The legislature shall annually in January choose a sergeant-at-arms, who shall hold his office until another is chosen in his stead, and may remove him for misconduct or other sufficient cause. During the recess of the legislature the governor and council may suspend him for like cause, and when a vacancy occurs during a recess, the governor and council may appoint a suitable person to perform the duties of the office until a new election.

SECT. 50. He shall receive a salary of two thousand dollars a year, and shall give bond to the treasurer of the commonwealth, in the sum of two thousand dollars, for the faithful performance of his duties, and to account for all money intrusted to him for the use of the commonwealth.

SECT. 51. He shall serve such processes and execute such orders, as may be enjoined upon him by the legislature, or either branch thereof; he shall attend the members or clerks of either house, when they are charged with messages to the other; shall see that the chambers and lobbies occupied by the legislature, are during the session kept in good order, and that the fires are seasonably kindled, diligently tended, and carefully extinguished; shall maintain order among the spectators admitted into the rooms in which the respective branches hold their sessions, and take proper measures to prevent the interruption of either branch, or the committees thereof; and shall have the control of, and exercise a strict superintendence over, his subordinate officers, giving them all needful directions and taking care that they promptly perform their duties.

SECT. 52. He shall have the general charge and oversight of the state house and its appurtenances, shall superintend alterations and repairs thereof, shall daily visit and inspect the apartments therein, (except the secretary's office, council chamber, and apartments therewith connected, which shall be under the care of the messenger of the governor and council,) and take proper precautions against damage thereto, or to the books, papers, or other property therein; and he shall take care that the chambers and lobbies, occupied by the legislature, are kept clean and in good order, during the recesses of the general court.

SECT. 53. He shall take all proper care to prevent any trespass or injury being committed contrary to the provisions of section fourteen of chapter five; and if such trespass or injury occur, and the offender is known, he shall forthwith give notice to the attorney-general or district attorney for the Suffolk district, in order that such offender may be prosecuted therefor.

SECT. 54. He shall, immediately after his election, appoint, subject to the approval of the presiding officers of the two branches, respectively, suitable and proper persons to be door-keepers to each house, who shall, during the session, render him all necessary assistance; and he shall also appoint, subject to like approval, such assistants to the door-keepers as the two houses may respectively direct.

SECT. 55. He shall annually appoint, subject to the approval of the commonwealth, four good and discreet

Sergeant-at-arms, how appointed, removed, &c.  
R. S. 12, §§ 59, 64.  
See 1907, 306.

salary and bond of  
R. S. 12, § 58.  
1854, 131, § 1.  
Resolves,  
1859, 95, 96.  
See Ch. 15, § 36.  
§ 37, 2, 153, 67.  
general duties of  
R. S. 12, §§ 59, 60, 62.  
See 1903, 87.

same subject.  
R. S. 12, § 60.  
1841, 120, § 2.

to preserve State house, &c., from injury.  
R. S. 12, § 63.

to appoint door-keepers and assistants, subject, &c.  
R. S. 12, § 60.  
1858, 159.  
See 1863, 241.  
1876, 153, 62.

to appoint watchmen.

R. S. 12, § 61.  
1838, 80.  
1868, 169, § 1.

Watchmen,  
duties of.  
1868, 169, §§ 1, 2.

same subject.  
R. S. 12, § 63.  
1868, 169, § 3.

same subject.  
1868, 169, §§ 1, 2,  
4.

salaries of  
1869, 178.  
See Ch. 15, § 38.  
See 1867, 167, § 2.  
1898, 341.  
1876 & 75.

Fireman, ap-  
pointment of.  
1868, 169, § 5.  
See Ch. 15, § 38.  
See 1867, 167, § 2.  
1868, 341.

Sergeant-at-  
arms, &c., to  
receive no fee.  
R. S. 12, § 65.

persons as watchmen of the state house, whom he may at any time remove, and for whose fidelity and good conduct, in said capacity, he shall be responsible.

SECT. 56. The watchmen shall remain in the state house every night from nine o'clock in the evening until sunrise in the morning, and maintain proper watch and guard for the security thereof; and shall visit, each night, all the rooms in which fires have been kindled during the preceding day, and attend to their safety.

SECT. 57. They shall take proper care to prevent any trespass or injury being committed in or upon any part of the state house, or of the appurtenances thereof belonging to the state; and if any is committed, and the offender is known, they shall forthwith give notice thereof to the attorney-general, in order that such offender may be prosecuted therefor.

SECT. 58. They shall open the outside doors of the lower floor and the gates every morning, and close the same every evening, except Sundays and public holidays; shall keep the lower floor, entries, and all the offices except that of the secretary, clean and in good order, kindle and keep up suitable fires therein, and light, clean, and keep in good order, the outside lamps. They shall act as messengers to the legislature during the sessions thereof, and shall perform all other duties with regard to the offices in the state house, except that of the secretary, as have heretofore been performed by watchmen and messengers to the general court. Two of them shall be on duty in the state house during the daytime while the outside doors are open, and maintain watch and guard for the security thereof. The keys of the doors, gates, and apartments, shall be so deposited that they may have ready access thereto.

SECT. 59. Each watchman shall receive a salary of eight hundred dollars a year in full compensation of all services required of him by the sergeant-at-arms as watchman throughout the year, and messenger during the annual session of the legislature.

SECT. 60. The sergeant-at-arms may appoint one person as fireman, who shall make and attend the fires in the basement of the state house, and perform such other duties as may be required by the sergeant-at-arms; and who shall receive in full compensation for his services a salary of six hundred dollars a year.

SECT. 61. No fee or reward shall be taken by the sergeant-at-arms, or any person under him, for opening the public rooms in the state house, for the view and inspection of visitors.

#### COMMISSIONERS ON REPAIRS OF THE STATE HOUSE, &c.

Commissioners  
on state house to  
have charge of  
appropriations,  
&c.  
1867, 65, §§ 2, 3.

SECT. 62. The sergeant-at-arms, secretary and treasurer of the commonwealth, shall constitute a commission, without compensation, having in charge the appropriations for the repairs, improvements, and furniture, of the state house, and contingent expenses of the council, general court, and offices in the state house. No expenses shall be incurred for said purposes unless previously authorized by said commission, and no expenses shall be authorized by them unless the same come within the amount appropriated by the legislature; except that in case of damage to the state house, caused during the recess of the legislature by fire or other unforeseen casualty, the commissioners may make all necessary repairs for the protection and preservation of the building.

#### MESSENGER TO THE GOVERNOR AND COUNCIL.

Messenger to  
governor and  
council.

SECT. 63. The governor with the advice and consent of the council may appoint a messenger, who shall hold his office during the pleasure of the governor, and receive a salary of eight hundred dollars a year.

The messenger may employ an assistant, whom he may remove at any time, and who shall receive for his services three hundred and sixty-five dollars a year.

SECT. 64. The messenger and assistant shall perform such duties as may be required of them by the governor or the governor and council.

1847, 237.  
1858, 178.  
See Ch. 15, § 38.  
See 1867, 167, § 7.  
Messenger's  
duties.

## CHAPTER 15.

### OF THE AUDITOR, TREASURER, LAND AGENT, AND MATTERS OF FINANCE.

#### AUDITOR.

##### SECTIONS

1. Auditor to give bond.
2. salary of, may employ clerks, &c.
3. shall examine accounts, and may deduct overcharges, &c.
4. shall keep accounts of receipts, &c.
- 5, 6. report of.
7. shall examine treasurer's books, &c., and perform certain other duties.
8. books, &c., of, to be examined during recess of legislature.

#### TREASURER.

9. Treasurer to give bond.
10. bond of, to be sued, in case, &c.
11. may be removed by governor on request of sureties, in case, &c.
12. salary of, clerks of, and their salaries.
13. may assign mortgages.
14. may sell real estate held under a mortgage foreclosed.
15. shall stamp bonds, &c., of the commonwealth.
16. may assign, &c., mortgages, &c., made to his predecessors, with approval of governor.
17. to transmit annually to attorney-general account of all bonds, &c.
18. to invest money received from sale of public lands.
19. to report to the legislature.
20. on death, &c., of, secretary and others to take charge of his office, &c.
21. inventory of moneys, &c., to be taken by committee, &c.
22. Duplicate receipts to be given by successor of such treasurer.

#### LAND AGENT.

23. Land agent, salary and bond of.
- 24, 25. duties of.
26. sales, &c., of, to be approved by governor and council.
27. to make report to legislature.

#### MATTERS OF FINANCE.

##### SECTIONS

28. Public officers to make and submit estimates to speaker of the house.
29. Officers disbursing money to report to the auditor.
30. Money to be paid from treasury only upon warrant of governor, &c.
31. Balances of appropriations may be paid in succeeding year, but not afterwards.
32. Payments may be withheld from persons with whom state has unadjusted accounts; or who withholds money, &c.
33. to be made from ordinary revenues, &c. Cash at beginning of year, how applied.
34. Notes to be signed by treasurer, approved by governor, &c.
35. Payments of interest on temporary loans, &c.
36. of salaries, &c.
37. Accounts for expenditures under orders of the legislature to be approved by presiding officers, &c. Limitation of amount of such orders, &c.
38. Meaning of "incidental expenses" in appropriation laws.
39. Less appropriation to supersede former larger.
40. Appropriations for a specified year, how construed.
- 41, 42. Directions to public functionaries in incurring liabilities, &c.
43. Improvements, &c., in public buildings, not to be made without appropriation.
44. Bills exceeding fifty dollars to be sworn to.
45. Committees of legislature not to incur liability in behalf of state, unless, &c.
46. Appropriations for witness fees, may be applied to taking depositions.
47. Compensation of commissioners, &c., to be determined by governor and council.
48. Travelling expenses of public officers.
49. Bills of charges against state to contain items.
50. Secretary, &c., to lay before legislature accounts of expenses of their offices, &c.

#### AUDITOR.

[Repeal and substitute 1867, 178.]

SECTION 1. (R.) [The auditor of accounts shall give bond to the treasurer of the commonwealth, with sufficient sureties, to be approved by the governor with the advice and consent of the council, for the faithful discharge of the duties of his office.]

Auditor to give  
bond.  
1849, 56, § 1.

SECT. 2. (R.) [He shall receive a salary of two thousand dollars a year and hire one permanent clerk at a salary of

salary of,  
clerks, &c.

1862, § 18.  
1864, 181, §§ 1, 2.  
1866, 440.

Auditor shall examine accounts, and may deduct overcharges, &c.  
1849, 66, § 2.  
1858, 11, § 7.  
1868, 158, § 12.  
13 Allen, 533.

shall keep account of receipts, &c.  
1849, 66, § 3.

report of.  
1849, 66, § 4.  
1858, 158, §§ 4, 5, 6, 7, 8.  
See Ch. 4, § 10.

same subject.  
1849, 66, § 4.  
1858, 158, § 1.

shall examine treasurer's books, &c., and perform certain other duties.  
1849, 66, §§ 4, 7.

Books, &c., of, to be examined during recess of legislature.  
1849, 66, § 5.

Treasurer to give bond.  
R. S. 12, § 14.

*May deposit money in certain banks. 1876 c. 21*

twelve hundred dollars a year, and such additional clerical assistance as may be necessary for the despatch of the public business, at a salary not exceeding eleven hundred dollars a year for each person employed.]

SECT. 3. (R.) [He shall examine and scrutinize and may deduct overcharges in all accounts and demands against the state, including those for services or objects for which definite appropriations are made, and for which appropriations are made not exceeding a certain sum, but excepting those due on account of the principal or interest of a public debt, or of the pay rolls of the council, senate, or house of representatives. He shall make and record in a book kept for that purpose a certificate specifying the amount due on each demand, the law authorizing its payment, and the head of expenditure to which it is to be charged; and shall transmit the certificate to the governor, who may draw his warrant therefor. As soon as may be after the drawing of a warrant, the secretary shall transmit to the auditor a written statement of the amount and purport thereof.]

SECT. 4. (R.) [He shall keep a distinct account of public receipts and expenditures under appropriate heads. If the sum allowed by law for any purpose has been expended or drawn for, he shall in writing communicate such fact to the secretary, who shall lay the same before the governor and council as soon as may be. He shall keep a like statement of the school fund and other public property, and of all debts and obligations due to and from the commonwealth; and for such purposes shall have free access to the books and papers in the offices of the secretary, treasurer, and land agent.]

SECT. 5. (R.) [On or before the fifteenth day of January in each year the auditor shall submit to the legislature a report exhibiting a full and accurate statement of the financial condition of the commonwealth, and of the pecuniary transactions thereof, during the year ending on the last day of the preceding month.]

SECT. 6. (R.) [He shall include in his report an estimate for the following year of the ordinary income of the commonwealth, and other means which he may point out for the defraying of expenditures, and shall annex thereto such representations or suggestions as he may deem necessary.]

SECT. 7. (R.) [He shall annually in January examine the books, accounts, and vouchers, of the treasurer, and shall comply with any regulations in relation to the duties of his office, not inconsistent with the provisions of this chapter, which may be transmitted to him in writing by the governor and council.]

SECT. 8. (R.) [The books and accounts of the auditor shall be carefully examined, at least once during the recess of the legislature, by a committee of the council, or such person as the governor with the advice and consent of the council may appoint; and shall annually in January be carefully examined by the committee of accounts.]

#### TREASURER.

[See 1867, 265; 1868, 71; 1879, 323.]

SECT. 9. The treasurer of the commonwealth shall give a bond, with three sureties at least, to be approved by the governor with the advice and consent of the council, in the sum of one hundred thousand dollars, payable to the commonwealth, with condition in substance as follows: that he and all persons employed in his office shall faithfully discharge their duties and trusts; that he shall use all necessary and reasonable diligence and care in the safe keeping and lawful disposal of all sums of money, books, bonds, notes, papers, and other things appurtenant to the office, which shall come to his hands, or to the hands of the persons employed by him; that he shall, upon reasonable notice, render a true account in the premises, when thereto required by law or by the senate

or house of representatives; shall deliver over to his successor in office, or other person authorized to receive the same, all money, books, bonds, notes, and other things belonging to said office; and that all balances and defalcations which shall appear against him, shall be forthwith paid into the treasury of the commonwealth.

SECT. 10. The bond shall be deposited in the secretary's office; and upon the order of the governor with the advice of the council, or the order of the senate and house of representatives, the attorney-general, or any other person by them respectively authorized for that purpose, shall commence an action thereon, and prosecute the same to final judgment, execution, and satisfaction.

SECT. 11. Upon the representation, under oath, of a surety in such bond, or other person, that the treasurer is insane, or manifestly insolvent, or has absconded or concealed himself, or is absent from the state, or from the duties of his office, to the hazard of the public treasury, if upon examination such representation appears to be true, the governor, with the advice and consent of the council, shall remove him from office and declare the office vacant.

SECT. 12. The treasurer shall receive a salary of two thousand dollars a year. He may employ in his office two permanent clerks, the first at a salary of fifteen hundred dollars a year, and the second at a salary of twelve hundred dollars a year; and such additional clerical assistance as may be necessary for the despatch of the public business, at a salary not exceeding eleven hundred dollars a year for each person employed.

SECT. 13. Where the treasurer is authorized to discharge a mortgage held by the commonwealth, he may instead thereof assign the same, and his assignment shall have the same effect as like assignments by other mortgagees; but shall not impose any liability, express or implied, upon the commonwealth.

SECT. 14. When the title to real estate becomes vested in the commonwealth by the foreclosure of a mortgage, the treasurer may, with the approval of the governor and council, convey the same, upon the payment of the amount of the mortgage debt, with the interest and expenses accrued thereon.

SECT. 15. (R.) [The treasurer shall provide himself with a stamp upon which shall be the words "The property of the commonwealth," and shall cause all bonds and securities in his possession belonging to the commonwealth to be stamped therewith.]

SECT. 16. No bond or security belonging to the commonwealth shall be transferred except with the written approval of the governor. Where the treasurer holds, as the property of the commonwealth, any note, bond, mortgage, or other security, made to any predecessor in his office, the same may be transferred, assigned, or discharged, in like manner as if it had been made directly to the commonwealth.

he first Monday of May, transmit to the acting officer of the government, and file in the treasury, in which the principal or interest remains due and have not been performed, classing may be conveniently done; and then on receiving the same, shall enforce and the performance of conditions payments and settlements in the of the state demand, with due regard

body of all notes, bonds, and mortgages of lands in the state of Maine, arising from the same. He shall keep a

Treasurer, bond of, to be sued in case, &c. R. S. 12, § 15.

may be removed by governor on request of sureties, in case, &c. R. S. 12, § 18. Amend. const. art. 17.

salary of, clerks of, and their salaries. R. S. 12, § 21. 1854, 131, §§ 1, 2. 1855, 440, § 1. 1857, 209, § 1. See Ch. 15, § 36. Rec 1870, 317. 1871, 233. 1872, 204.

may assign mortgages. 1847, 186.

may sell real estate held under a mortgage foreclosed. 1856, 68, § 1.

shall stamp bonds, &c., of commonwealth. (R.) Repealed 1866, 290.

may assign, &c., mortgages, &c., made to his predecessors with approval of governor. 1856, 68, § 2.

to transmit annually, to attorney-general, account of all bonds, &c. R. S. 12, § 25.

to invest money received from sale of public lands. R. S. 10, §§ 6, 7.

separate account of the money, notes, and obligations, so received by him; and shall, with the approbation of the governor and council, invest said money in the stocks of the New England states and in the obligations of the counties, cities, and towns, thereof; regard being had to the security, productiveness, and availability, of the fund when required for use.

Treasurer, to report to the legislature.  
1858, 1, § 4.

SECT. 19. The treasurer shall annually in January report to the legislature a statement of the operations of his department for the year ending on the last day of the preceding month; including a specific statement of all warrants remaining unpaid, and the names of the persons in whose favor they are drawn.

on death, &c., of secretary and others to take charge of his office, &c.  
R. S. 13, § 17.

SECT. 20. Upon the death or resignation of the treasurer, or other vacancy in that office, the secretary, with two suitable persons to be appointed by warrant under the hand and seal of the governor, shall repair to the places where the money, papers, and other things belonging to the treasury, are kept, and, having previously given notice to such late treasurer, or his heirs, executors, or administrators, and to his sureties or one of them, or to such of the persons as may be found within the state to attend thereat, shall seal up and secure, in their presence if they attend, all such money, papers, and other things supposed to be the property of the commonwealth; and they shall give such representatives or sureties, if required by them, a true list of all boxes and packages so sealed up and secured, and shall note on such list the place wherein the same are deposited.

Inventory of money, &c., to be taken by committee, &c.  
R. S. 13, § 18.

SECT. 21. After sealing up and securing the effects, the secretary, with the two persons appointed as aforesaid, shall as soon as may be, and after notice to the parties mentioned in the preceding section, cause the boxes and packages to be examined, and a true inventory to be taken of the money, and of all bonds, notes, securities, books, and other things appertaining to said office, which shall be required by the late treasurer, or his representatives or sureties, or either of them; a copy of which inventory shall be deposited in the secretary's office: and copies that may be required shall also be given to any of said parties. The secretary and said two persons shall safely keep all money and other effects inventoried as aforesaid, until another treasurer is chosen or appointed; to whom when qualified they shall deliver over the same, taking duplicate receipts from such new treasurer; one of which receipts shall be deposited with the secretary, and the other with the late treasurer, or his legal representatives or sureties, or one of them.

Duplicate receipts to be given by successor of such treasurer.  
R. S. 13, § 19.

SECT. 22. Upon every appointment or election of a new treasurer, he shall give duplicate receipts, one of which shall be deposited with the secretary; and such receipts shall be sufficient evidence for his predecessor in office, of the property of the state remaining and delivered over by him, and shall be his sufficient discharge therefor.

#### LAND AGENT.

[Land office abolished and duties transferred 1861, 85.]

Land agent, salary and bond of.  
R. S. 10.  
1851, 190.  
1858, 86.  
1859, 91.  
(R.) Repealed  
1861, 85.

SECT. 23. (R.) [The governor, with the advice of the council, shall annually, and whenever a vacancy occurs, appoint a competent person to be land agent, who shall receive a salary of one thousand dollars a year, give bond to the commonwealth for the faithful performance of the duties of the office, in a sum and with sureties to be approved by the governor and council, and hold office for the term of one year, unless sooner removed.]

duties of.  
Resolves,  
1859, 52, 108.

SECT. 24. He shall have charge of all lands, flats, shores, and rights in tide waters, belonging to the commonwealth, except the Back Bay lands and other lands and rights otherwise provided for; and shall exercise the powers and perform the duties specified in chapters fifty-two and one hundred and three of the resolves of the year eighteen hundred and fifty-nine.



SECT. 25. He shall have the custody of all records, deeds, instruments, plans, maps, charts, surveys, and other documents, relating to said property or appertaining to the lands in Maine, and safely keep the same in the land office at the state house; he may make and certify copies thereof, and shall keep said office open at stated hours, as public convenience may require.

SECT. 26. All sales, contracts, leases, deeds, and instruments, made by him, shall be approved by the governor and council and recorded in the records of the land office, and without such approval and record, the same shall be of no effect.

SECT. 27. He shall annually report to the legislature in detail all sales, leases, contracts, and other transactions, of said office for the previous year, and such other facts relating to said office and property as may be necessary or useful.

Land agent,  
duties of.  
Resolves,  
1859, 108.

sales, &c., by,  
to be approved by  
governor, &c.  
Resolves,  
1859, 108.

to make report  
to legislature.  
See Ch. 4.

## MATTERS OF FINANCE.

[See 1862, 82, § 4, 187; 1867, 255, 904; 1868, 71; 1870, 250; 1872, 849.]

SECT. 28. Every public officer or board having charge of any department of the public service requiring an expenditure of money from the state treasury, other than the payment of salaries, shall on or before the fifteenth day of January in each year, submit in writing to the speaker of the house of representatives, a detailed estimate of the sums which will be necessary for the maintenance of the department for the current year.

SECT. 29. Every public officer or board having charge of the disbursement of money, appropriated from the ordinary revenue or from the income of any funds belonging to or under the charge of the commonwealth, shall annually in the first week of January, report in detail to the auditor, in such form as he shall prescribe, all expenditures made by them, and the objects to which such expenditures have been applied.

SECT. 30. No money shall be paid from the treasury, but upon the warrant of the governor drawn in accordance with an appropriation in some act or resolve passed within the same political year, except for payments required on account of the principal or interest of a public debt, or for the salaries of the judges of the supreme judicial court, and of the governor, as established by standing laws. Said principal and interest shall be paid when due, and said salaries in the same manner as if a specific appropriation therefor were included in a separate law passed each year. No warrant shall be drawn for the payment of any account or demand except for the pay rolls of the council, senate, and house of representatives, unless the same is certified by the auditor.

SECT. 31. The preceding sections shall not prevent the payment from the treasury in any year, to a person to whom the same is due, of any appropriation or unexpended balance of an appropriation made in the preceding year. If such an appropriation or balance shall not be called for by the person to whom it is due, or shall not be applied to the objects for which it was designed, within the political year in which it is made, or the succeeding year, it shall revert to the general treasury, and shall not afterwards be paid out, except upon a new appropriation.

SECT. 32. No appropriation law shall be construed to require any payments to a person with whom the state has an unadjusted account. But the governor, upon receiving satisfactory information that any money is illegally withholden from the state by such person, shall instruct the treasurer to withhold all payments of money to him while such default continues.

SECT. 33. Payments authorized by laws appropriating money shall be made from the ordinary revenue, if no other provision is expressly made therefor. Cash from the ordinary revenue on hand at the beginning of each year, shall be carried to the account of the ordinary revenue of that year.

SECT. 34. All notes for money borrowed in anticipation of the reve-

Public officers to  
make and submit  
estimates to  
speaker of house.  
1858, 158, § 1.

Officers disburs-  
ing money to re-  
port to auditor.  
1859, 221, § 2.

Money to be paid  
from treasury  
only upon war-  
rant of the gov-  
ernor, &c.  
1849, 56, § 2.  
1858, 1, §§ 1, 2.  
18 Allen, 698.

Balances of ap-  
propriations may  
be paid in suc-  
ceeding year, but  
not afterwards.  
1858, 1, § 3.  
16 Gray, 481.

Payments to be  
withheld from  
persons having  
unadjusted ac-  
counts, &c.  
1858, 11, § 2.  
1858, 158, § 18.  
8 Allen, 247.

to be made  
from ordinary  
revenue, &c.  
Cash at begin-  
ning of year.  
1858, 11, § 8.  
1858, 158, §§ 10,  
12.

1874, 360

Notes, how  
signed, &c.  
Resolves,  
1868, 13.

Payments of  
interest, &c.  
1868, 158, § 17.

of salaries, &c.  
1849, 186, § 12.  
1868, 11, §§ 3, 4.  
1868, 158, § 13.  
1869, 272, § 4.

See 1867, 268.  
1868, 4.

Accounts under  
orders of legisla-  
ture.

1868, 158, § 11.  
Resolves,  
1867, 19.

(R.) Repeal and  
substitute.  
1869, 309.

"Incidental  
expenses."  
1868, 11, § 5.  
1868, 158, § 18.  
1869, 272, § 5.  
Less appropria-  
tion to supersede  
larger.

1868, 11, § 6.  
1868, 158, § 18.  
1869, 272, § 6.  
Appropriations  
for a specified  
year.  
1868, 158, § 15.  
Directions to  
public function-  
aries in incurring  
liabilities, &c.  
1868, 11, § 7.  
1868, 158, §§ 12,  
14.

Same subject.  
1868, 158, § 14.

Improvements,  
&c., in public  
buildings, not to  
be made without  
an appropriation.  
1869, 177, § 1.

Bills exceeding  
fifty dollars to  
be sworn to.  
1869, 221, § 3.  
1862, 51.  
1862, 101, § 3.

(R.) Repealed  
1867, 178, § 14.

nue, shall be signed by the treasurer, approved by the governor, and countersigned by the auditor.

SECT. 35. The interest on temporary loans to the state from banks, corporations, or individuals, shall be paid semi-annually, on the first days of April and October in each year.

SECT. 36. Salaries payable from the treasury shall be paid quarterly on the first days of April, July, October, and January, and shall be in full for all services rendered to the state by the persons to whom they are paid. No salary shall be paid to any person for a longer period than that during which he has been actually employed in the duties of the office. When a salary is diminished, no greater rate shall be paid by reason of any previous appropriation therefor. No person shall at the same time receive more than one salary from the state treasury.

SECT. 37. (R.) [Accounts for expenditures incurred or services rendered under an order of either or both branches of the legislature, shall be approved by the presiding officer of the branch by which the same is passed, and thereupon the auditor shall audit and certify the same, and the governor may draw his warrant therefor. But no such order shall authorize the expenditure of more than one hundred dollars, unless a specific appropriation of a larger sum has been previously made.]

SECT. 38. The term "incidental expenses," when used in an appropriation, shall include expenses of postage, printing, and stationery.

SECT. 39. An appropriation for a service or object for which a larger or different appropriation has been made in some previous act or resolve, shall supersede the other.

SECT. 40. Laws making appropriations for a specified year shall not be construed to prevent the application in the following year of any unexpended balance, to the same objects.

SECT. 41. Public functionaries charged with the execution of any service for which an appropriation is made, shall use every effort to accomplish the same for a less sum than the amount of the appropriation, when it can be done conformably to the interests of the state. No public functionary shall make purchases or incur liabilities in the name of the commonwealth for a larger amount than that which has been appropriated by law for the service or object; and the state shall be subject to no responsibility for the acts of its servants and officers beyond the several amounts duly appropriated by law. But this section shall not prevent public officers or boards from continuing the several departments of service under their charge during the month of January, until the pleasure of the legislature is made known, at the rate of expenditure authorized by the appropriations for the preceding year.

SECT. 42. No public officer or board shall incur any new or unusual expense, make any permanent contract, increase any salary, or employ any new clerk, assistant or other subordinate, unless an appropriation sufficient to cover the necessary expense thereof has been previously made by the legislature.

SECT. 43. No permanent improvements, alterations, or additions, shall be made in any of the buildings belonging to the commonwealth, until specific descriptions of such intended changes, and estimates of the expenses thereof, have been submitted to the legislature, and special appropriations made therefor; but this shall not prohibit expenditures necessary for keeping said buildings and the grounds appurtenant thereto in good order and condition.

SECT. 44. (R.) [Before any charges are paid in bills or schedules for articles purchased, services rendered, or expenses incurred, for the commonwealth, except for salaries fixed by law or payments otherwise provided for, the auditor may, and where the amount exceeds fifty dollars shall, require affidavit to be made that such articles have been purchased, services rendered, and expenses incurred. All original bills, and original

bills included in such schedules, shall, within one month after the money has been paid, be delivered to the auditor to be retained by him.]

SECT. 45. No committee of the legislature shall incur any expenditure or liability in behalf of the state, after the close of the regular session, unless there is a subsisting appropriation therefor; and the amount of the expenditure or liability shall be limited by the appropriation.

Committees not to incur liability unless, &c.  
1868, 158, § 12.

SECT. 46. Any appropriation for fees of witnesses before committees of the legislature, may be applied so far as necessary to pay the expense of taking depositions ordered or authorized by such committees. Bills for such fees or expenses of depositions shall be approved and audited as provided in section thirty-seven.

Appropriation for witness fees may be applied to taking depositions  
1869, 221, § 1.

SECT. 47. In cases not otherwise provided for, the compensation for the services of committees of the legislature appointed to act during the recess, and that of legal counsel and commissioners appointed by the executive, shall be determined by the governor and council, who shall approve such claims before they are sent to the auditor of accounts.

Compensation of commissioners, &c.  
1850, 143.  
See 1869, 309.

1875-186

SECT. 48. Commissioners and other public officers having jurisdiction throughout the commonwealth, to whom travelling expenses are allowed, shall receive for each mile actually travelled, not more than three and one-half cents a mile each way, nor more than the amount actually expended.

Travelling expenses of public officers  
1859, 221, § 7.

SECT. 49. No bill of charges against the state shall be allowed and paid, unless it specifies the items.

Bills of charges to contain items.  
1852, 83.

SECT. 50. The secretary, treasurer, auditor, land agent, and adjutant-general, shall lay before the legislature, at the commencement of the annual session, an account of the salaries and allowances received by them and their clerks, and all other expenses of their offices, for the preceding year, with a statement of the names and periods of service of each clerk employed.

Secretary, &c., to lay before legislature accounts of expenses, &c.  
Resolves, 1819, 268.  
See 1861, 95.

## CHAPTER 16.

[See 1866, 263.]

### OF THE STATE BOARD OF AGRICULTURE.

#### Summary

1. Board, how constituted.
2. Tenure of office of members — vacancies, how filled.
3. Board to meet at state house. Members to have no compensation, except for expenses.
4. Secretary and clerk, salaries of, &c.
5. Board to investigate subjects relating to agriculture, take donations, &c.

#### Sections

6. Board to provide forms and regulate returns of agricultural societies, &c.
7. to report to legislature.
8. Secretary to publish for distribution abstracts of returns of agricultural societies.
9. may appoint agents. Agents to report to.

SECTION 1. The governor, lieutenant-governor, and secretary of the commonwealth, one person appointed from and by each agricultural society which receives an annual bounty from the state, and three other persons appointed by the governor with the advice and consent of the council, shall constitute the state board of agriculture.

Board, how constituted.  
1852, 142, § 1.  
See 1866, 263, § 3.

SECT. 2. One-third of the appointed members of the board shall retire from office on the first Wednesday of February in each year, according to their appointments. The vacancies thus occurring shall be filled by the governor and council, or the agricultural societies, as the offices were before filled, and the persons thus appointed shall hold their offices for three years from the expiration of the former terms. Other vacancies may be filled in the same manner for the remainder of the

Tenure of office of members — vacancies, how filled.  
1852, 142, §§ 1, 2.

vacant terms. The present members of the board shall continue to hold their offices during the terms for which they are appointed.

Board to meet at  
state house, &c.  
1852, 142, § 4.  
See 1866, 268, § 2.

SECT. 3. The board shall meet at the state house at least once in each year, and as much oftener as may be deemed expedient. No member thereof shall receive compensation from the state, except for personal expenses when engaged in the duties of the board.

secretary, &c.  
1852, 142, § 4.  
Resolves, 1864,  
72. 1869, 46.  
See Ch. 15, § 36.  
See 1867, 187, § 4.  
1869, 96.

SECT. 4. They may appoint and prescribe the duties of a secretary of the board, who shall receive a salary of two thousand dollars a year; and who at such times as the board approve may employ a clerk at a salary not exceeding six hundred dollars a year.

Board to investi-  
gate subjects re-  
lating to agricul-  
ture, take dona-  
tions, &c.  
1852, 142, § 3.  
to provide  
forms, regulate  
returns, &c.  
1853, 127, § 2.

SECT. 5. They shall investigate such subjects relating to improvement in agriculture in this state as they think proper, and may take, hold in trust, and exercise control over, donations or bequests made to them for promoting agricultural education, or the general interests of husbandry.

SECT. 6. They may prescribe forms for and regulate the returns required of the different agricultural societies, and furnish to the secretary of each, such blanks as they deem necessary to secure uniform and reliable statistics.

to report to  
legislature.  
1852, 142, § 4.  
See Ch. 4.

SECT. 7. They shall annually on or before the fourth Wednesday of January, by their chairman or secretary, submit to the legislature a detailed report of their doings, with such recommendations and suggestions as the interests of agriculture may require.

Secretary to pub-  
lish abstracts, &c.  
1847, 69, § 4.  
1852, 142, § 4.

SECT. 8. The secretary of the board shall in each year cause to be made and published for distribution, as full an abstract of the returns of the agricultural societies as he deems useful.

may appoint  
agents, &c.  
agents to re-  
port to.  
1859, 208, § 1.  
See 1862, 164.  
1869, 96.

SECT. 9. He may appoint one or more suitable agents, to visit the towns in this state, under the direction of the board, for the purpose of inquiring into the methods and wants of practical husbandry, ascertaining the adaptation of agricultural products to soil, climate, and markets, encouraging the establishment of farmers' clubs, agricultural libraries, and reading-rooms, and of disseminating useful information in agriculture by means of lectures or otherwise. Such agents shall annually in October make detailed reports to the secretary of the board.

## TITLE VI.

### CHAPTER 17.

#### OF COUNTIES AND CERTAIN COUNTY OFFICERS.

##### COUNTIES.

###### SECTION

1. Boundaries, powers, &c., of counties.
2. Former conveyances to counties confirmed.
3. In Suffolk, county property to belong to Boston.
4. How county lands may be sold.
5. Counties to provide public buildings except, &c.
6. In Suffolk, public buildings to be provided by Boston.
7. County maps.
8. Same subject.

###### SECTION

9. Counties of Suffolk and Middlesex to have common jurisdiction on Charles River.
10. Courts in Suffolk county to have concurrent jurisdiction with courts of other counties.

##### COUNTY COMMISSIONERS.

11. County commissioners to be sworn and to choose chairman.
12. Proceedings, if any of board are interested.
13. If opposing parties appear, three disinterested commissioners must act.

Sections

14. Commissioners may punish for contempt.
15. processes of, sheriffs and other officers to execute.
16. general powers of.
17. to examine and allow treasurers' accounts, &c.
18. to make estimates annually.
19. Penalties.
20. Commissioners and treasurer to publish county receipts and expenditures.
21. Commissioners to apportion county taxes.
22. Limit of county debt.
23. Contracts above \$800, to be made in writing after proposals issued, &c.

Sections

57. Sheriffs, bond of, may be sued, &c.
58. Actions for malfeasance, &c., of sheriffs or deputies to survive.
59. Treasurer to furnish copies of bonds.
60. Sheriffs not to be arrested. Executions to run against property only.
61. Liability of, when execution is returned unsatisfied.
62. upon removal of, alias execution may issue against their bodies, &c.
63. Defaults of deputies, &c., after death, &c., of sheriff, to be adjudged a breach.
64. Sheriff and deputy not to act as attorney. Penalty.
65. shall serve all writs, &c.; may serve where their towns, &c., are parties, &c.; may attend juries for assessing damages, &c.
66. may serve demands, &c., by copy.
67. may command aid.
68. may serve writs after sheriff's removal from office.
69. to attend courts, &c.
70. compensation allowed to, in each county.
71. to render account to county treasurers of all money received.
72. to make returns of moneys received, &c., and number of days' attendance upon courts. Penalty.
73. Secretary to furnish blanks.

CORONERS.

74. Coroners to be sworn, and give bond.
75. Superior court to examine into sufficiency of coroner's bonds; if insufficient, new to be given.
76. Surety of coroner, may petition to be discharged.
77. Penalty for neglecting to give bonds. Suits on coroner's bonds.
78. Coroner to execute process where sheriff is a party, &c.
79. shall perform duties of sheriff during vacancy in sheriff's office.
80. may require aid; not to act as counsel, &c.

COMMISSIONERS OF INSOLVENCY.

81. Commissioners of insolvency to be sworn. Vacancies in office of, how filled.

REGISTERS OF DEEDS.

82. Districts in Berkshire, middle, northern, southern.
83. in Bristol, southern, northern.
84. in Middlesex, northern, southern.
85. Registry of deeds in other counties.
86. Register to be sworn, and give bond.
87. may be appointed in certain cases.
88. may be removed.
89. must reside where office is kept.
90. Deeds to be recorded in county or district where the estate lies.
91. Special provision respecting Barnstable.
92. Register to keep book for noting receipt of deeds.
93. Deeds to be noted therein when received.
94. Manner of recording instruments, &c.
95. Certificate to be made on deed, when recorded.
96. Form of indexes to be kept by registers.
97. Entries to be made within twenty-four hours, &c.
98. Provisions respecting entry of name of grantor of estates conveyed by sheriffs, &c.
99. Deeds of executors, &c., and partitions of land, how indexed.

## SECTION

100. Registrars to make annual returns to secretary of number of instruments recorded, amount of fees received, &c.  
 101. Form of such returns.  
 102. Abstract of returns to be laid before legislature.

## SECTION

103. Copies of indexes to be made annually, in which surnames shall be assorted into distinct alphabetical lists, &c.  
 104. Copies of indexes or new indexes may be made, and may be printed for sale, &c.

## COUNTIES.

Boundaries, &c., of counties.  
 Mass. Records, 1643, vol. 2, p. 38.  
 1662, vol. 4, part 2, p. 52. Plym. Records, 1686.  
 Statutes, 1693, 2. 1696, 8. 1731, 13. 1761, 4. 1793, 43. 1803, 14. 1811, 61. 1812, 87.  
 R. S. 14, §§ 1, 4, 5.  
 See Ch. 1, § 1.  
 Former conveyances to counties, confirmed.  
 R. S. 14, § 6.

In Suffolk county property to belong to Boston.  
 R. S. 14, § 7.  
 1852, 68.  
 1857, 18.

How county lands may be sold.  
 R. S. 14, § 8.

Counties to provide public buildings.  
 R. S. 14, § 9.  
 See 1863, 216.

In Suffolk.  
 R. S. 7, § 26.  
 R. S. 14, §§ 10, 34.  
 1854, 448, § 36.  
 See 1872, 91.

County maps.  
 1846, 241, § 2.  
 1853, 325, § 1.

Same subject.  
 1846, 241, § 3.  
 1853, 325, § 2.

Counties of Suffolk and Middlesex to have common juris-

SECTION 1. The boundaries, rights, duties, powers, privileges, and immunities, of the several counties, shall remain as now established. Each county shall continue a body politic and corporate for the following purposes: to sue and be sued, to purchase and hold for the use of the county personal estate and lands lying within its own limits, and to make necessary contracts and do necessary acts in relation to the property and concerns of the county.

SECT. 2. Real and personal estate heretofore conveyed by any form of conveyance to the inhabitants of a county, to the county treasurer, or to a committee, or other persons, for the use and benefit of a county, shall be deemed to be the property of such county; and such conveyances shall have the same force and effect as if made to such counties by their respective corporate names.

SECT. 3. In the county of Suffolk, the real and personal estate which on or before the twenty-third day of June in the year one thousand eight hundred and thirty-one belonged, or was deemed and taken to belong, to said county, shall belong to and be vested in the city of Boston; and the city of Chelsea, and towns of North Chelsea and Winthrop, shall have no right, title, or interest, therein.

SECT. 4. The county commissioners, or other public officers having the charge and management of the county lands, may by their order of record appoint agents to sell any real estate of their county; and deeds made on behalf of the inhabitants of the county by such agents, under their proper hands and seals, and duly acknowledged by them, shall be sufficient to convey the right, title, interest, and estate, which the county then has to the lands so conveyed.

SECT. 5. Each county except Suffolk shall provide suitable court houses, jails, houses of correction, fire-proof offices, and other necessary public buildings for the use of the county; except that the county of Dukes County need not provide a house of correction.

SECT. 6. In the county of Suffolk, the court houses, jails, house of correction, fire-proof offices, and other necessary public buildings, for the use of the county, shall be provided by the city of Boston, and said city shall pay all county charges.

SECT. 7. Changes in the boundaries of cities and towns, the courses of roads, railroads, and canals, and other topographical alterations in each county, shall be correctly and fairly delineated on the county maps in the possession of the county commissioners, who shall retain said maps, and from time to time cause such delineations to be made thereon.

SECT. 8. The secretary of the commonwealth shall, as often as necessary, transmit the manuscript county maps in his office to the respective county commissioners, who shall cause to be transferred thereto, by a competent engineer or surveyor under their direction, all alterations and corrections mentioned in the preceding section, and shall within two months after receiving the same return such maps to the office of the secretary, who shall immediately cause the alterations to be delineated on the plates of the state map.

SECT. 9. The jurisdiction of the counties of Suffolk and Middlesex shall be in common in and upon the waters of Charles River; that is to say, all that space which lies within the banks of the river so far as the

same runs between said counties. All offences committed within the banks of the river, as above described, may be heard, tried, and punished, in that county in which legal process against the offender is first issued, in like manner as if such offence had been committed in such county; and civil process from either county may run into and be executed within the common jurisdiction.

SECT. 10. The courts in the county of Suffolk, concurrently with the courts of the several other counties in which parts of the territory hereinafter described are situated, shall have jurisdiction of all crimes, offences, and misdemeanors, committed on the islands or waters in Boston harbor which lie westerly of a line drawn from Point Alderton to the easternmost point of the Outer Brewster Island, and from thence to Short Beach, at the line dividing the towns of North Chelsea and Winthrop, as if said islands and waters were within the limits of the county of Suffolk.

diction on  
Charles River.  
R. S. 14, §§ 2, 3.

Courts in Suffolk  
county to have  
concurrent juris-  
diction with  
courts of other  
counties.  
1858, 185.

See 1863, 177.  
1864, 60.

1876 c. 8

## COUNTY COMMISSIONERS.

SECT. 11. County commissioners before entering upon their duties shall be sworn, and at their first meeting after the annual election in each year, shall choose a chairman of their board by ballot.

County commis-  
sioners to be  
sworn, &c.  
R. S. 14, §§ 24,

25.

1864, 77, § 4.

Proceedings, if  
either is inter-  
ested.

R. S. 14, § 26.

1837, 151.

2 Met. 186.

7 Cush. 395.

13 Gray, 12.

103 Mass. 120.

105 Mass. 223.

116 m. 73

SECT. 12. If either of the county commissioners is interested in a question before the board, or if any part of a road upon which they are to act lies within the city or town in which either of them resides, or if either of them is unable to attend, or if there is a vacancy in the board, the other member or members shall give notice to one or both of the special commissioners, as the case may require, who shall forthwith proceed to act as a member of the board. If a board cannot be organized in conformity with these provisions, then such residence in the city or town in which the road lies, shall be no disqualification.

SECT. 13. No business in which opposing parties appear, shall be finally determined, except by consent, unless there are three disinterested commissioners present and acting thereon; but the provisions of this and the preceding section, except so much thereof as relates to proceedings in case of a vacancy, shall not extend to the county of Dukes County.

If opposing par-  
ties appear, three  
commissioners to  
act.

R. S. 14, § 27.

1837, 151.

8 Cush. 1.

1874, 329

SECT. 14. The commissioners when assembled for the performance of their duties, may administer oaths to witnesses, and punish disorderly conduct causing an interruption to the business of their meeting, or amounting to an open and direct contempt of their authority or persons, by fine not exceeding five dollars, or by confinement in the custody of the sheriff, or a deputy-sheriff, coroner, or constable, for a time not exceeding twelve hours.

Commissioners  
may punish for  
contempt.

R. S. 84, § 2.

1856, 63.

SECT. 15. Sheriffs, deputy-sheriffs, coroners, and constables, shall serve and execute all legal warrants and processes to them directed by the commissioners.

Sheriffs, &c., to  
execute pro-  
cesses.

R. S. 84, § 3.

SECT. 16. The commissioners shall have authority:

First, to provide for the erecting and repairing of court houses, jails, and other necessary public buildings, within and for the use of the county.

Commissioners,  
general powers of.  
R. S. 14, § 31.

See 1872, 157.

1837, 265.

Second, to represent their county, and to have the care of the county property, and the management of the business and concerns of the county, in all cases which are not otherwise specially provided for.

Town re. records

1874, 162

Third, to do such other acts as may be necessary to carry into effect the powers given them by law.

SECT. 17. They shall examine and allow the annual accounts of the county treasurers, and allow and settle all accounts of the receipts and expenditures of the county.

to examine  
treasurers' ac-  
counts, &c.  
R. S. 14, §§ 31,

36.

to make esti-  
mates annually.

SECT. 18. They shall annually prepare and make up to the last day of each year, the estimates of taxes for all county charges and debts for

R. S. 14, §§ 31,  
32, 36.  
1836, 137.  
14 Gray, 140.

the year then next ensuing; including the building and repairing of court houses, jails, houses of correction, and other county buildings, with their appurtenances. The estimates so made up and approved by them, shall be recorded by their clerk in a book kept for that purpose; and a fair copy thereof, with a statement of the amount of borrowed money due from the county, and the amount of taxes due and unpaid, at the time of making said estimates, signed by the presiding commissioner and attested by their clerk, shall, with the treasurer's accounts, be sealed up and transmitted by the clerk to the office of the secretary of the commonwealth on or before the first day of February next after making up the same, to be laid before the legislature for examination and allowance.

Penalties.  
1847, 190.

SECT. 19. Any county commissioner, clerk, or other officer, who neglects to perform a duty required of him by the two preceding sections, shall forfeit fifty dollars.

Commissioners  
and treasurer to  
publish county  
receipts and ex-  
penditures.  
R. S. 14, § 36.  
1863, 310, § 1.

SECT. 20. The county treasurer and commissioners of each county except Suffolk shall at the close of each year publish in one or more newspapers, not exceeding three, printed in the same or an adjoining county, an account of the receipts and expenditures of their county, arranged under distinct heads, and a specific statement of the debts of the county, the purposes for which they were contracted, and the time when they become due.

Commissioners to  
apportion county  
taxes.  
R. S. 14, §§ 31,  
32.

SECT. 21. The commissioners shall apportion all county taxes according to the then last state valuation, and shall by their clerk certify to the assessors of the several cities and towns their respective portions thereof.

County debts.  
1863, 310, § 2.  
1864, 238.  
1869, 231.

SECT. 22. The commissioners may renew the whole or any part of the county debts, negotiate loans in anticipation of and to be paid from the annual tax when collected, and contract new debts not exceeding in any one year or for any one object, thirty dollars for each one thousand inhabitants of the county.

Contracts above  
\$300 to be made  
in writing after  
proposals issued,  
&c.  
1864, 206.

SECT. 23. All contracts to be made by the commissioners for public works, shall, if exceeding three hundred dollars in amount, be made in writing, after notice for proposals therefor has been issued and published at least three times in some newspaper published in the county, city, or town interested therein.

In what cases  
recognizances  
shall be required  
of parties who ap-  
ply for damages,  
&c.  
1836, 278, § 1.  
1847, 259, § 2.  
1867, 213, § 4.  
See Ch. 43, § 48.

SECT. 24. When a person or corporation applies to the commissioners to estimate or assess damages sustained by reason of property taken or intended to be taken for the purposes of a railroad or other corporation, or to perform any other official act in relation to matters in which the county has no interest, the commissioners, before proceeding to act, shall require the party to enter into a recognizance to the county, with sureties to their satisfaction, for the payment of all costs and expenses which shall arise by reason of such application and the proceedings thereon; and the same remedy shall be had to enforce the payment thereof, as is provided in the case of recognizances entered into under the provisions of chapter forty-three.

When damages  
assessed, costs,  
&c., to be added.  
1836, 278, § 2.  
102 Mass. 126.

SECT. 25. The commissioners, when application is made by a party whose property has been or is intended to be taken by a railroad or other corporation, shall, if they assess damage, add thereto the amount of costs and expenses incurred by reason of the application and the proceedings of the commissioners thereon.

Proceedings at  
other times than  
regular meetings.  
1839, 78, § 2.  
1846, 271.  
1847, 259, § 1.

SECT. 26. The commissioners or the chairman of the board may, at other times than at regular meetings, receive petitions relating to railroads or to matters in which the county has no interest, and take recognizances thereon, and upon such petitions, and similar petitions entered at a regular meeting and pending before them, may appoint times for hearing the parties, and acting thereon, and direct proper notices to be given to persons interested.

1875. 223

1875. 223



SECT. 27. The commissioners and chairman shall make return of such petitions and recognizances, with their proceedings, at any regular meeting, or special meeting held for that purpose; their clerk shall enter the same of record, and such further proceedings shall be had thereon as the case shall require. The costs of such special meeting shall be paid by such of the parties as the commissioners decide.

Petitions, &c., to be returned to regular or special meeting, &c.  
1839, 78, § 2.  
1848, 271.  
1847, 269, § 1.  
102 Mass. 125.

SECT. 28. The commissioners shall annually, before November, furnish to the several clerks of the cities and towns, blank forms and envelopes for returns of votes for commissioners, county treasurer, and register of deeds, with such printed directions on the envelopes as they shall deem necessary for the guidance and direction of such officers in making the returns according to law.

Commissioners to furnish blanks, &c.  
1841, 128.  
1857, 296, § 1.

SECT. 29. (R.) [The commissioners and special commissioners of each county shall receive from the county treasury, in equal semi-annual payments, in January and July, in full payment for all their services and travel in their respective counties, and to be divided among them in proportion to the number of days and amount of travel actually performed by them respectively, annual salaries as follows:—

compensation of  
1859, 163, §§ 1, 2, 3.

(R.) *Repeal and substitute.*  
1860, 186.  
See also 1864, 280, § 1.  
1867, 340.  
1871, 236.  
1872, 151.

17m. 433

For the county of Barnstable, eight hundred dollars:

For the county of Berkshire, twelve hundred dollars:

For the county of Bristol, eleven hundred dollars:

For the county of Dukes County, two hundred dollars:

For the county of Essex, twenty-five hundred dollars:

For the county of Franklin, nine hundred dollars:

For the county of Hampden, fourteen hundred dollars:

For the county of Hampshire, nine hundred dollars:

For the county of Middlesex, three thousand dollars:

For the county of Norfolk, eighteen hundred dollars:

For the county of Plymouth, fifteen hundred dollars:

For the county of Worcester, twenty-two hundred dollars.]

SECT. 30. When a petition to the commissioners is disallowed, and costs are chargeable to the petitioner, there shall be taxed for each commissioner at the rate of three dollars a day for time, and five cents a mile for travel to and from the place of meeting, to be paid into the county treasury.

Costs when petition is disallowed.  
1869, 163, § 4.

SECT. 31. The commissioners shall hold meetings in their respective counties at the following times and places:—

Meetings.  
(May be adjourned.)  
1869, 208.]  
Essex.  
R. S. 84, § 6.  
1861, 227.

In the county of Essex, at Ipswich, on the second Tuesday of April; at Salem, on the second Tuesday of July; at Newburyport, on the second Tuesday of October; and at Lawrence, on the last Tuesday of August; and on the fourth Tuesday of December, at Ipswich, Salem, or Newburyport, as they shall order at their next preceding term.

In the county of Middlesex, at Cambridge, on the first Tuesday of January; at Concord, on the first Tuesday of June; and at Lowell, on the first Tuesday of September.

Middlesex.  
R. S. 84, § 6.  
1842, 1.  
1857, 96.  
See 1867, 341.  
Worcester.  
R. S. 84, § 6.

In the county of Worcester, at Worcester, on the fourth Tuesday of March, the third Tuesday of June, the second Tuesday of September, and the fourth Tuesday of December.

In the county of Hampshire, at Northampton, on the first Tuesdays of March, September, and December, and on the Tuesday next after the second Monday of June.

Hampshire.  
R. S. 84, § 6.  
1846, 221.

In the county of Franklin, at Greenfield, on the first Tuesdays of March and September, and the second Tuesdays of June and December.

Franklin.  
R. S. 84, § 6.

In the county of Hampden, at Springfield, on the second Tuesday of March, and the fourth Tuesdays of June

Hampden.  
R. S. 84, § 6.

In the county of Berkshire, at Pittsfield, on the first Tuesdays of Jan-

Berkshire.  
1837, 146.  
1840, 77.  
See 1868, 325, § 3.

Norfolk.  
R. S. 84, § 6.  
1837, 200.

Plymouth.  
R. S. 84, § 6.

Bristol.  
R. S. 84, § 6.

Barnstable.  
R. S. 84, § 6.

Dukes County.  
R. S. 84, § 6.

Powers of com-  
missioners, and  
county expenses  
in Nantucket.  
R. S. 14, § 20.  
1859, 71, § 1.

In Suffolk.  
R. S. 14, § 29.  
1854, 443, § 33.

In Chelsea,  
North Chelsea,  
and Winthrop,  
commissioners of  
Middlesex to act.  
R. S. 84, §§ 4, 7.  
1851, 336.  
1852, 163.  
1857, 14, 18.  
1859, 163.

To whom powers  
and duties of  
commissioners  
appertain.  
R. S. 14, § 87.  
1847, 199.

County treasurer  
to be sworn and  
give bond.  
R. S. 14, § 45.

compensation  
of.  
R. S. 14, § 51.  
1859, 263.

See 1872, 80.

1867, 278.

1868, 92.

1867, 278.

1872, 247.

1867, 278.

1867, 278.

In the county of Norfolk, at Dedham, on the third Tuesday of April, the fourth Tuesdays of June and September, and the last Wednesday of December.

In the county of Plymouth, at Plymouth, on the first Tuesday of January, the third Tuesday of March, and the first Tuesday of August.

In the county of Bristol, at Taunton, on the fourth Tuesdays of March and September.

In the county of Barnstable, at Barnstable, on the second Tuesday of April and October.

In the county of Dukes County, at Edgartown, on the Wednesday next after the third Monday of May, and the Wednesday next after the second Monday of November.

SECT. 32. In the county of Nantucket, the selectmen of the town of Nantucket shall have like powers and perform like duties, as are exercised and performed by the commissioners of other counties; and said town may raise such sums of money as may be necessary for defraying the expenses of the county of Nantucket.

SECT. 33. In the county of Suffolk, the aldermen of the city of Boston shall have like powers and perform like duties within said city, as are exercised and performed by the county commissioners of other counties, except such as relate to trials by jury, and the recovery of damages on such trials, in laying out, altering, or discontinuing, highways or town ways.

SECT. 34. In the county of Suffolk, the county commissioners for the county of Middlesex shall have jurisdiction within the city of Chelsea and the towns of North Chelsea and Winthrop, and shall exercise and perform therein all the powers and duties relating to highways and to all other matters which in their own county are committed to their control and direction, except as is otherwise provided by law; and when performing duties which relate to said places, they shall be paid therefor by said places, or either of them, in such proportions as the commissioners may direct, at the rate of three dollars a day, and five cents a mile, travel, for each commissioner attending in the case.

SECT. 35. All the provisions of law concerning the powers, duties, and liabilities, of county commissioners and their clerks, shall, except where otherwise specially provided, be construed to include and apply to all other public officers who by law exercise the powers of such commissioners or clerks in the respective counties.

1876 & 143

#### COUNTY TREASURERS.

[See 1864, 230, §§ 2-7.] 1874, 394 884-5

SECT. 36. The treasurer shall be sworn by the county commissioners or any one of them, and shall give bond to the county, with sufficient sureties and in such penal sum as the commissioners direct, for the faithful discharge of the duties of his office.

SECT. 37. The treasurer shall be furnished by the county with an office in the court house or other county building; and receive in quarterly payments from the treasury an annual salary, in full for all services by him performed, as follows:—

For the county of Barnstable, five hundred dollars:

For the county of Berkshire, eight hundred dollars:

For the county of Bristol, eleven hundred dollars:

For the county of Dukes County, one hundred dollars:

For the county of Essex, fifteen hundred dollars:

For the county of Franklin, six hundred dollars:

For the county of Hampden, eight hundred dollars:

For the county of Hampshire, six hundred dollars:

For the county of Middlesex, two thousand dollars:

For the county of Norfolk, eleven hundred dollars:

For the county of Plymouth, six hundred dollars:

For the county of Worcester, fifteen hundred dollars:

SECT. 38. If the office of treasurer becomes vacant by the death, removal from the county, or incapacity, of the treasurer, or otherwise, the commissioners shall appoint some suitable person resident in the county to fill the vacancy. The person so appointed, upon being sworn and giving bond, shall be treasurer until another is elected and qualified in his stead.

SECT. 39. The treasurer, except where provision is otherwise made by law, shall pay all money received by him for the use of the county, as the commissioners shall direct.

SECT. 40. At the close of each year he shall render his account to the county commissioners and account with them for all money received and paid by him in behalf of the county, and when the account is approved and allowed, it shall be delivered by him to the clerk of the commissioners. If the treasurer neglects to perform the duty required of him by this section, he shall forfeit fifty dollars.

SECT. 41. No further assessment shall be made on the several places in the county until the treasurer thereof has rendered his accounts, and they are laid before the legislature as provided by law, and allowed.

SECT. 42. The treasurer may prosecute to final judgment and execution, suits upon bonds, notes, and other securities, given to the county or to him or his predecessors in office, whether commenced by himself or his predecessor. He may prosecute for injuries done to the public lands, buildings, or other property of his county.

SECT. 43. If a public officer required by law to account with and pay over money to the county treasurer, fails to do so for ten days after the time prescribed by law therefor, the treasurer shall give notice thereof to the district-attorney, who shall forthwith institute the necessary proceedings for the recovery of the amount due.

SECT. 44. In the county of Suffolk, the treasurer of the city of Boston shall be the county treasurer.

SECT. 45. In the county of Nantucket, the treasurer of the town of Nantucket shall be county treasurer.

SECT. 46. No person holding the office of attorney-general, district-attorney, justice of the superior court, clerk of the courts, or sheriff, shall be county treasurer.

See 1867, 278.

1867, 278.

Treasurer, vacancy in office of, how filled.

R. S. 14, § 45.

to pay over money as commissioners direct.

R. S. 14, § 50.

to account with commissioners.

R. S. 14, §§ 35, 51.

1847, 193.

no further assessments to be made until his accounts are allowed.

R. S. 14, § 53.

may sue on county bonds, &c.

R. S. 14, § 54.

to give notice, &c., when public officer fails to pay over money.

1869, 221, § 4.

of Suffolk.

R. S. 14, § 47.

1864, 448, § 42.

of Nantucket.

R. S. 14, § 48.

Incompatibility.

R. S. 14, § 49.

1869, 193.

#### BOARD OF EXAMINERS.

SECT. 47. In each county, except Suffolk and Nantucket, the judge and register of the probate court, and the clerk of the courts, shall be a board of examiners for the county, and if two of said offices are held by the same person in any county, the sheriff of such county shall be a member of the board.

SECT. 48. The board shall examine the accounts of the county commissioners for services rendered in the discharge of their duties; and if it appears that the accounts ought to be allowed, they shall make a certificate thereof upon the same.

SECT. 49. The members of the board shall each be paid at the rate of three dollars a day for every day employed in the discharge of their duties, and ten cents a mile for travel to and from the place of their meeting; and their accounts shall be audited and settled by the county treasurer.

Board of examiners, of whom to consist.

R. S. 14, § 33.

1858, 93, §§ 1, 2,

4, 5.

See Ch. 7, §§ 25,

26.

to examine accounts of commissioners.

R. S. 14, § 39.

1859, 168.

See 1864, 280, § 5.

compensation of.

R. S. 14, § 40.

#### BOARD OF ACCOUNTS IN SUFFOLK.

[Repeal and substitute 1866, 117.]

SECT. 50. (R.) [In the county of Suffolk, the judge of the probate court of the city of Boston shall be a board of examiners; who shall constitute a quorum; who shall

In Suffolk, board of accounts to examine accounts, &c.

Board of accounts  
in Suffolk.

R. S. 14, §§ 41,

42.

1848, 7, § 1.

1848, 61, §§ 1, 2.

compensation  
of.

meet quarter yearly, and as much oftener as may be necessary, to examine and allow bills of costs, accounts, and charges arising in said police court and in the maintenance and keeping of the prisoners in the jail of the county of Suffolk, and of other expenses and charges in keeping said jail and other places of confinement and punishment in said city. They shall certify such accounts, charges, and expenses, as are allowed by them, by an indorsement thereon addressed to the public officer by whom the same are payable. They shall each receive three dollars a day while employed in the discharge of said duties.]

## SHERIFFS.

Sheriffs to be  
sworn and give  
bond.

R. S. 14, § 58.

1853, 69.

1859, 196.

15 Gray, 427, 516.

vacancies in of-  
fice of, how filled.

R. S. 14, §§ 56,

60, 62.

1866, 173, § 8.

may appoint  
deputies.

R. S. 14, § 59.

bonds of, to be  
annually exam-  
ined by superior  
court, &c.

R. S. 14, § 62.

1859, 196.

sureties of,  
may be dis-  
charged, when,  
&c.

R. S. 14, § 61.

1859, 196.

1175, 1584

penalty on, for  
neglect to give  
bond.

R. S. 14, § 63.

1859, 196.

bond of, may  
be sued, &c.

R. S. 14, §§ 64,

65.

17 Mass. 567.

18 Gray, 384.

SECT. 51. Every sheriff, before performing any official act by himself or deputy, shall be sworn, and shall give to the treasurer of the commonwealth such bond with sureties as the superior court shall direct and approve, with condition that he shall faithfully perform his own duties and be responsible for all his deputies.

SECT. 52. If a vacancy occurs in the office of sheriff in any county, the governor with the advice and consent of the council may appoint and commission some person to fill the same, who shall hold his office until another is elected and qualified. Every sheriff so appointed and qualified shall give immediate notice thereof to the several coroners of his county.

SECT. 53. Each sheriff may appoint deputies, who before proceeding to execute any process shall be sworn.

SECT. 54. The superior court shall once in each year examine into the sufficiency of the official bonds given by the sheriffs; and if it appears that any such bond is insufficient, the court shall cause a record thereof to be made by their clerk, give notice to the sheriff, and require him to give a new bond to the satisfaction of the court, within such time as they order.

SECT. 55. When a surety upon the official bond of the sheriff, or the heirs, executors, or administrators, of such surety, shall, in the county of the sheriff, petition the superior court to be discharged from the bond, the court shall cause the sheriff to be served with an attested copy of the petition, and shall require him to give new security, to the satisfaction of the court, at such time as they order. Upon new security being given, such surety, his heirs, executors, and administrators, shall be discharged from further responsibility on the bond.

SECT. 56. If a sheriff neglects or refuses to give bond as required in this chapter, he shall forfeit one hundred and fifty dollars for each month's neglect, and the attorney-general shall prosecute for the same; and the superior court shall forthwith certify the fact of such neglect or refusal to the governor and council, and to the attorney-general. Unless such sheriff satisfies the governor and council that there was reasonable cause for such neglect, and gives security to their satisfaction within twenty days after the date of such certificate, the governor with the advice and consent of the council shall remove him from office.

SECT. 57. When the condition of the official bond of a sheriff is broken, any person who has recovered judgment against the sheriff, his executors, or administrators, for a cause or injury which constitutes a breach of the condition of the bond, or has obtained an allowance of his claim against the estate of the sheriff if settled as insolvent in the probate court, may at his own expense institute and prosecute a suit thereon in the name of the treasurer. The writ shall be indorsed by the person for whose benefit the suit is instituted, or his attorney, and like proceedings shall be had thereon as in a suit by a creditor on an administration bond. The amount of such judgment or allowance, or such part thereof as remains unsatisfied, with the interest due thereon, shall be the sum for which execution shall be awarded.

SECT. 58. Actions for the malfeasance or nonfeasance of a sheriff or his deputies, may be sued against the executors or administrators of such sheriff, in like manner as if the cause of action survived at common

Actions against sheriffs, &c., to survive.  
R. S. 14, § 68.  
6 Met. 94, 114.  
See Ch. 127.

The commonwealth shall deliver an attestation of any sheriff to any person applying for a copy shall be received as competent evidence; but if the execution of the bond requires the treasurer to bring the original into court.

Treasurer to furnish copies of sheriff's bonds.  
R. S. 14, § 67.

He shall not be arrested upon mesne process or execution judgment is rendered against him, nor his capacity, for a sum of money, the execution of his goods, chattels, and lands, but not

Sheriffs not to be arrested. Executions to run against property only.  
R. S. 14, §§ 73, 74.  
1 Gray, 61, 60.

His goods, chattels, or real estate, shall be returned not satisfied, the sheriff and council an attested copy of the proceedings to the sheriff within thirty days after such notice pay the debt of his debt with reasonable costs of execution, the governor with the advice of the council.

Liability of sheriff, when execution is returned unsatisfied.  
R. S. 14, § 76.

He shall be removed under the preceding section, if any execution against him has issued, and after the appointment of another sheriff, the sheriff shall issue writs in common form, as well against goods and lands, of the judgment debtor.

Upon removal of sheriff, execution may issue against his goods, &c.  
R. S. 14, § 78.

He shall be liable in office of a deputy-sheriff for the nonfeasance of the sheriff by whom he was appointed, in breach of the condition of the official bond.

Defendants of deputies, &c., after death, &c., of sheriff.  
R. S. 14, § 77.  
7 Mass. 506.  
18 Mass. 295.  
Sheriff and deputy not to act as attorney.  
Penalty.  
R. S. 14, §§ 79, 80.  
8 Pick. 483.  
See § 80, and Ch. 18, § 65.

A deputy-sheriff who appears in a court or before a justice of the peace, or counsel for any party in a suit, or in a declaration, plea, or process for such suit, or himself to be employed in the collection of any debt, or to make gain or profit therefrom, advises, or procures, directly or indirectly, to commence any action for more than five dollars.

Deputies shall serve writs, &c.; may serve where their towns, &c., are parties, &c.

Deputies shall serve and execute, within their towns, writs lawfully issued to them; may serve writs in their towns wherein a county, city, town, parish, or village, is a party or interested, notwithstanding the nonexistence of such corporations; and may sum up damages sustained by locating turnpike tolls on members of such corporations.

may attend juries, &c.  
R. S. 14, §§ 68, 69, 71.  
4 Pick. 405.

A copy by them attested, all demands, and returns of service thereof shall be prima facie evidence, and shall not exclude the service thereof.

may serve demands, &c., by copy.

They shall be entitled to suitable aid in the execution of their duties, and for the preservation of the peace, or for the apprehension of a person for a breach of the peace; and for the escape or rescue of persons arrested.

may command aid.  
R. S. 14, § 72.  
1 Gray, 68.  
See § 80.  
See Ch. 18, § 65, and Ch. 163, § 16.

Deputies in their hands at the time of the death of a sheriff, or in the case of a vacancy in the office of sheriff, having a writ or precept in his hands, shall have the same authority,

may serve writs after sheriff's removal from office.  
R. S. 14, § 70.

Sheriffs to attend courts, &c.  
1859, 257, § 3.

compensation allowed to, in each county.  
1859, 257, § 1.

See 1860, 92.  
1866, 298, § 11.  
1867, 345.  
1872, 850.

to render account and pay over money received.  
R. S. 14, § 90.  
1859, 257, § 2.

to make return of money received, &c., and attendance on courts.  
Penalty.  
1848, 75, §§ 4, 5.  
1860, 31.  
1867, 40.  
1868, 46, § 1.  
1869, 257.

Secretary to furnish blanks.  
1848, 75, § 4.  
1860, 31, § 2.

Coroners to be sworn, &c.  
R. S. 14, § 98.  
bonds of, to be examined by superior court.  
R. S. 14, § 94.  
1859, 196.

Surety may be discharged.  
R. S. 14, § 95.  
1859, 196.  
See § 55.

Penalty for neglecting to give bonds.  
Suits on coroners' bonds.  
R. S. 14, § 96.

when to serve process.  
R. S. 14, §§ 97, 98.  
19 Pick. 339.  
21 Pick. 636.

and shall be under the same obligation, to serve, execute, and return, such writ or precept, as if the sheriff had continued in office.

SECT. 69. Sheriffs shall attend all courts in their respective counties, and meetings of the county commissioners when so ordered by the board.

SECT. 70. The sheriffs shall receive annual salaries payable quarterly from the treasury of their respective counties, as follows: Of Barnstable, four hundred dollars; of Berkshire, eight hundred dollars; of Bristol, one thousand dollars; of Dukes County, two hundred dollars; of Essex, fifteen hundred dollars; of Franklin, seven hundred dollars; of Hampden, eight hundred dollars; of Hampshire, seven hundred dollars; of Middlesex, two thousand dollars; of Nantucket, two hundred and fifty dollars; of Norfolk, one thousand dollars; of Plymouth, six hundred dollars; of Suffolk, twenty-five hundred dollars; of Worcester, eighteen hundred dollars.

SECT. 71. The sheriffs shall keep a true account of all fees and moneys received by virtue of their offices, and annually on or before the fifteenth day of December render to the treasurers of their counties under oath a true account thereof; and at the same time pay over to said treasurers all such moneys.

SECT. 72. They shall annually on or before the fifteenth day of October, return to the secretary of the commonwealth, under oath, a true account of all moneys received by them from all sources by virtue of their office, for the year ending the last day of the preceding month; designating the amount received from the county treasurer, and from all other sources; and specifying the amount received by them for fees in civil and criminal processes; with a statement of the number of days they have attended upon a court of record and the county commissioners; and upon more than one at the same time. If a sheriff neglects to make such return he shall forfeit two hundred dollars.

SECT. 73. The secretary shall annually furnish the sheriffs of the several counties with blank forms for the returns required by the preceding section, and shall lay said returns before the legislature.

#### CORONERS.

[See 1861, 112; 1862, 172.]

SECT. 74. Coroners, before entering upon the duties of their office, shall be sworn and give bond in the manner required of sheriffs.

SECT. 75. The superior court shall once in each year examine into the sufficiency of the official bonds given by the respective coroners; and if it appears that the bond of any coroner is insufficient, shall cause a record thereof to be made by the clerk, give notice to such coroner, and require him to give a new bond, to the satisfaction of the court, within such time as they order.

SECT. 76. When a surety upon the official bond of a coroner, or the heirs, executors, or administrators, of such surety, petition the superior court in the county of the coroner to be discharged from such bond, like proceedings shall be had thereon as are provided in case of a similar petition by a surety on a sheriff's official bond.

SECT. 77. If a coroner neglects or refuses to give the bond required, or if the condition of his bond is broken to the injury of any person, he shall be liable to removal from office, and be subject to like penalties as sheriffs are in like cases; and any person interested shall have remedies upon the official bond of the coroner in like manner as is provided in the case of official bonds given by sheriffs.

SECT. 78. Every coroner shall within his county, when the sheriff is a party, serve and execute all writs and precepts, and perform all other duties of the sheriff; and may serve and execute all such writs and precepts where any county, town, parish, religious society, or school dis-

trict, is a party or interested, notwithstanding he is at the time a member of such corporation.

SECT. 79. When the office of sheriff is vacant, the several coroners of the county may perform all the duties required by law to be performed by the sheriff, until another sheriff is appointed or elected and qualified, and they have notice thereof.

SECT. 80. Sections sixty-four and sixty-seven of this chapter shall apply to coroners as well as sheriffs.

1 Met. 303.  
5 Met. 83.  
1 Gray, 51.  
Coroner, when  
to perform du-  
ties of sheriff.  
R. S. 14, § 90.  
may require  
aid, &c.  
R. S. 14, §§ 72,  
79.

#### COMMISSIONERS OF INSOLVENCY.

SECT. 81. Commissioners of insolvency before entering upon the discharge of their duties shall be sworn. If a vacancy occurs in the office of commissioner of insolvency in any county, the governor with the advice and consent of the council shall appoint some person to fill the same, who shall hold his office until another is elected as provided in chapter ten.

Commissioners  
of insolvency to  
be sworn — va-  
cancies in office  
of, how filled.  
1848, 804, § 2.  
1856, 173, § 3.

#### REGISTERS OF DEEDS.

(See 1808, 114; 1866, 161; 1869, 445; 1870, 264; 1871, 123; 1872, 34, 181.) 1873 c. 19. Asst. Reg.

SECT. 82. The county of Berkshire is divided into three districts for the registry of deeds, as follows: —

The towns of Lenox, Pittsfield, Richmond, Stockbridge, Lee, Tyringham, Becket, Washington, Peru, Hinsdale, and Otis, constitute the middle district, and the office thereof shall be kept in the town of Lenox; the towns which lie north of the middle district constitute the northern district, and the office thereof shall be kept in the town of Adams; and the towns which lie south of the middle district constitute the southern district, and the office thereof shall be kept in the town of Great Barrington.

Districts in  
Berkshire. *Attentive*  
1873 c. 299  
registry of deeds  
1876 & 127  
1876 c. 127  
Middle.  
Northern.  
Southern.  
R. S. 14, § 110,  
111, 112, 113.  
1847, 172.  
1848, 4.  
1867, 123.  
See 1868, 325, § 6.

SECT. 83. The county of Bristol is divided into two districts for the registry of deeds, as follows: —

The city of New Bedford, and the towns of Westport, Dartmouth, and Fairhaven, constitute the southern district, and the office thereof shall be kept in New Bedford; the other towns in said county constitute the northern district, and the office thereof shall be kept in the town of Taunton.

In Bristol.  
Southern.  
Northern.  
1837, 186.  
See 1851, 23.

SECT. 84. The county of Middlesex is divided into two districts for the registry of deeds, as follows: —

The city of Lowell, and the towns of Dunstable, Tyngsborough, Dracut, Tewksbury, Billerica, Chelmsford, Carlisle, Wilmington, Littleton, and Westford, constitute the northern district, and the office thereof shall be kept in the court house in Lowell; the other cities and towns in said county constitute the southern district, and the office thereof shall be kept in the city of Cambridge.

In Middlesex.  
1875. 2. 2  
Northern.  
Southern.  
1855, 79.  
1866, 116.  
See 1880, 102.

ties shall continue to have an office in a shire town thereof.

shall be sworn before one or more the county of Suffolk before one and under their direction respectively for the faithful discharge of his

In other coun-  
ties.  
R. S. 14, § 103.  
Register to be  
sworn and give  
bond.  
R. S. 14, § 103.

signation, or removal, of a register in superior court, and in any other a meeting held at the place of their appoint on their records some suit-ct to be register of deeds until the provided in chapter ten.

ds, upon presentment of the grand discharging his official duties, or by

may be ap-  
pointed in cer-  
tain cases.  
R. S. 14, § 106.  
1859, 196.  
See 1863, 200.  
1871, 4.  
1872, 34.

may be re-  
moved.



reason of infirmity of body or mind is incapable of rightly discharging in person the duties of his office, the county commissioners, or in the county of Suffolk the superior court, shall upon reasonable notice remove him from office, and may order the books, papers, and other things belonging to the office, to be delivered to their clerk, or to a new register when appointed or elected.

SECT. 89. Every register of deeds shall reside in the city or town where the office of his registry is required to be, and shall there keep all books, records, deeds, and papers, belonging to his office, and shall have such office open to the public every day except Sundays and public holidays.

SECT. 90. Instruments required to be recorded in the registry of deeds, shall be recorded in the registry of the county or district where the estate lies, and in all things relating to the register or registry of deeds, each district therefor shall be deemed to be a county.

SECT. 91. In the county of Barnstable, all records, deeds, and other instruments, made in pursuance of chapter one hundred and eight of the statutes of the year one thousand eight hundred and twenty-seven, and chapter forty of the statutes of the year one thousand eight hundred and twenty-eight, shall have the same effect as the original records of such deeds and instruments in the registry of said county would have had.

SECT. 92. Every register of deeds shall keep a book, each page of which shall be divided into six columns, with titles or heads, in the following form:—

Date of reception.	Grantors.	Grantees.	Town where the lands lie.	To whom delivered, after being recorded.	Fees received.
--------------------	-----------	-----------	---------------------------	--	----------------

SECT. 93. He shall enter in said book all deeds and instruments left for record, and all copies left as cautions, in the order in which they are received; noting in the first column the day, hour, and minute, of reception, and the other particulars in the appropriate columns; and every instrument shall be considered as recorded at the time so noted.

SECT. 94. Every register shall record in a fair and legible handwriting or in print, and in continuous successive lines, upon the pages of the record book, all instruments he is required to record; and shall note on the record, before attesting the same, all erasures and interlineations made therein.

SECT. 95. He shall certify upon every instrument recorded by him, the time when it was received, the number of the book, and the page where it is recorded.

SECT. 96. He shall keep two sets of indexes, each divided into five columns, with titles or heads in one set as follows:—

Date of reception.	Grantors.	Grantees.	Book.	Leaf or page.
--------------------	-----------	-----------	-------	---------------

And in the other set as follows:—

Date of reception.	Grantees.	Grantors.	Book.	Leaf or page.
--------------------	-----------	-----------	-------	---------------

SECT. 97. He shall, within twenty-four hours after a deed or other instrument which he is by law required to record is left for record, cause the name of each and every grantor, grantee, or other party, thereto, to



ly in its appropriate index, and 1946, 206, § 2.  
 ter the same is recorded, affix to  
 nd leaf or page where it is re-

f another person is sold or con-  
 llector, or by any other authority  
 itioned in the following section,  
 rom whom it passes shall, for the  
 , be considered as the grantor, if  
 and if it does not so appear, the  
 nder the letter U.

onveyance by executors, adminis-  
 nder authority of an order of  
 e, is left for record, the register  
 xes of the grantors, the names of  
 sons, whose estates are conveyed,  
 and also the names of such ex-  
 her persons. When a decree for  
 's return thereon, is so left for  
 entry books and indexes of the  
 he persons whose estates plainly

shall annually on or before the  
 secretary of the commonwealth  
 deeds and other instruments re-  
 g the last day of the preceding  
 y him for recording deeds and  
 l pages of records covered by the  
 ; and the expenses of his office  
 unty during the same time ; and  
 such return, he shall forfeit fifty

d by the preceding section shall  
 :—

received r instru- nts.	No. of legal pages cov- ered.	Expenses of office above what is paid by county.
-------------------------------	-------------------------------------	--

ually prepare and lay before the  
 made to him under the two pre-

thin the first six months of each  
 g the year as the commissioners  
 ense of the several counties, by  
 county commissioners, or in the  
 Boston, copies of the indexes to  
 pective counties during the pre-  
 d grantees shall respectively be  
 active surnames, arranged in such  
 and other conveyances to which  
 lists shall be placed in alphabet-  
 ldermen may cause the Christian  
 well as their surnames, to be ar-  
 ists, when in their opinion refer-  
 l thereby. Such copies shall in  
 for the indexes to the records.  
 pedient they may cause copies of  
 ords existing in the registries of

may be made and  
printed for sale,  
&c.  
1856, 292, §§ 3, 4.

deeds in their respective counties, or of any part thereof, to be made by some competent person at the charge of their respective counties, upon such plan, and in such manner, as will in their judgment best facilitate references to the records; and may cause the copies of indexes, or new indexes, to be printed at the charge of their respective counties, for sale at a price not less than the cost of printing, paper, and binding.

## TITLE VII.

### OF TOWNS AND CITIES.

CHAPTER 18. — Of the Powers of Towns, and the Election, Qualification, and Duties, of Town Officers.

CHAPTER 19. — Of certain Powers and Duties of Cities.

CHAPTER 20. — Of the Census.

CHAPTER 21. — Of the Registry and Return of Births, Marriages, and Deaths.

CHAPTER 22. — Of Workhouses and Almshouses.

CHAPTER 23. — Of Watch and Ward.

CHAPTER 24. — Of Fires and Fire Departments.

CHAPTER 25. — Of Fences and Fence Viewers, Pounds, and Field Drivers.

*Exchange of lands*  
1876-238

*Lying in hospitals ch. 157*  
*Water pipes & water fixtures*  
1875-105

### CHAPTER 18.

OF THE POWERS OF TOWNS, AND THE ELECTION, QUALIFICATION, AND DUTIES, OF TOWN OFFICERS.

#### POWERS AND DUTIES OF TOWNS.

- challenge of meetings*  
*sheds*  
*itinerant musicians*  
1875-136
- driving of cattle*  
1876-20
- Passing things through*  
1876-122
- Recognizances*  
1870-139
- SECTION
1. Towns, to be bodies corporate as heretofore.
  2. Bounds of towns.
  3. Perambulations and renewal of boundaries, every five years.
  4. Notice of perambulation to adjoining towns. Penalty for neglect to give notice.
  5. Monuments to be erected, except, &c.
  6. Perambulations of towns adjoining other states.
  7. Penalty for neglect of selectmen.
  8. Towns may sue and be sued, &c.
  9. may hold property, make contracts, &c.
  10. may grant money for certain purposes.
  11. may make by-laws, and affix penalties.
  12. Penalties, how recovered.
  13. Towns may provide that a duty imposed in a by-law may be done by an officer, &c.
  14. By-laws to be approved by superior court.
  15. to bind all persons in the town.
  16. to be published.
  17. Towns to provide book-cases, for books, &c., received from state.
  18. Recognizances by towns, how entered into.

#### MEETINGS.

- SECTION
19. Qualifications of voters in town affairs.
  20. Annual and other meetings may be adjourned.
  21. Warrants shall issue for all meetings — may include two or more meetings.
  22. Contents of the warrant, &c.
  23. If selectmen refuse, meeting may be called by a justice of the peace.
  24. If major part of selectmen die, resign, &c., the rest may call meetings.

#### MODERATORS.

25. At certain meetings, moderator to be chosen.
26. During election of moderator, town clerk to preside, &c.
27. Moderator's powers and duties.
28. No person shall speak without leave of the moderator, &c.
29. Penalty for disorderly conduct in meetings.
30. on moderator or other presiding officer for reading, &c., ballots, before the poll is closed.

**CHOICE AND APPOINTMENT OF TOWN OFFICERS.**

**SECTIONS**

21. Town officers to be chosen. Town clerk, &c.  
Officers to be sworn.
22. Certain officers to be chosen by ballot.
23. If person elected constable does not accept, new choice to be made.
24. Penalty for neglecting to choose selectmen, &c.
25. Meetings may be called by part of a board of selectmen, in certain cases.

**SECTION**

57. Town treasurer may be collector of taxes.
58. power and duty as collector.
59. to render accounts annually — compensation of.

**CONSTABLES.**

60. Penalty for refusing to serve as constable, &c.
61. Constables who give bonds may serve civil processes in certain cases.
62. Time of filing bond to be noted. Remedies to parties injured by breaches of the bond, &c.
63. Constables may serve writs and processes where their towns, &c., are parties.
64. may serve certain demands and notices.
65. may require aid — not to act as counsel, &c.
66. shall execute warrants of selectmen.
67. to complain of breaches of certain laws.
68. may convey persons and property taken, to the jail, &c., out of their town.
69. may serve warrants, in certain cases, in any place in commonwealth.
70. may serve process in unincorporated places, annexed.

**COLLECTORS OF TAXES.**

71. Constables to be collectors of taxes when, &c.
72. to give bond.
73. Town may give collector certain powers of treasurer in collecting taxes.

**SURVEYORS OF HIGHWAYS.**

74. Penalty for refusing to serve as surveyor of highways
75. Penalty on surveyors for neglect of duty.
76. Surveyors shall be liable to towns for such deficiencies, in case, &c.

**DISTRICTS.**

77. Districts to have the powers of towns given by this chapter.
78. Provisions for the district of Marshpee.

**ABUSE OF CORPORATE POWERS.**

79. Towns, how restrained from illegal appropriations of money, &c.

**FINES AND FORFEITURES.**

80. Fines and forfeitures.

**USES OF TOWNS.**

[of this chapter]

are to be bodies corporate with all the powers, and subject to all the duties to be imposed upon them.

Town lines shall remain as now established. The determination of town lines, and they shall be renewed in every five years, by two or more commissioners, or such substitutes as they in writing may appoint, at every such renewal the proceedings shall be as follows.

At the annual town meeting, the selectmen of the most populous town shall give ten days' notice, in writing, to the selectmen of the adjoining towns, of the time and place of meeting. The selectmen who neglect to give such notice, or by their substitutes, shall severally be liable on complaint to the use of

Towns to be bodies corporate.  
R. S. 15, § 8  
12 Mass. 199.  
Town lines.  
R. S. 15, § 1.  
Perambulation of town lines.  
R. S. 15, § 2.  
100 Mass. 62.  
102 Mass. 151.

notice of to adjoining towns.  
penalty for neglect.  
R. S. 15, § 2.  
1289, 136.

the commonwealth, or by action of tort to the use of the town whose selectmen perform their duty.

SECT. 5. The selectmen of the contiguous towns shall erect at the joint and equal expense of such towns, permanent monuments to designate their respective boundary lines at every angle thereof, except where such lines are bounded by the ocean or some permanent stream of water. The monuments shall be of stone, well set in and at least four feet high from the surface of the ground; and the initial letter of the respective names of such contiguous towns shall be plainly and legibly cut thereon; but it shall not be necessary to erect a new monument in a place where a permanent stone monument two feet in height above the surface of the ground already exists.

SECT. 6. The selectmen of towns bordering on another state, where the lines between the states are settled and established, shall once in every five years give notice to the selectmen or other proper municipal officers of such towns in the other state as adjoin their towns, of their intention to perambulate the lines between their adjoining towns. Where such state lines are in dispute, the perambulations shall be made once in every five years after the lines are settled and established. If such notice and proposal are accepted by the officers to whom they are made, a perambulation shall be made in the same manner as between towns in this state. No boundary erected by authority of this state and an adjoining state, shall be removed by such selectmen or other municipal officers.

SECT. 7. A selectman who refuses or neglects to perform any duty required of him by the three preceding sections, shall forfeit twenty dollars to the use of the commonwealth.

SECT. 8. Towns may in their corporate capacity sue and be sued by the name of the town, and may appoint all necessary agents and attorneys in that behalf.

SECT. 9. They may hold real estate for the public use of the inhabitants, and may convey the same, either by a vote of the inhabitants or by a deed of their committee or agent; may hold personal estate for the public use of the inhabitants, and alienate and dispose of the same by vote or otherwise; may hold real and personal estate in trust for the support of schools and for the promotion of education within the limits of the town; may make contracts necessary and convenient for the exercise of their corporate powers; and may make orders for the disposal or use of their corporate property as they may judge necessary or expedient for the interest of the inhabitants.

SECT. 10. They may, at legal meetings, grant and vote such sums as they judge necessary for the following purposes: —

- For the support of town schools;
- For the relief, support, maintenance, and employment, of the poor;
- For laying out, discontinuing, making, altering, and repairing, highways and town ways, and for labor and materials to be used thereon;
- For procuring the writing and publishing of their town histories;
- For burial grounds;
- For encouraging the destruction of noxious animals;
- For all other necessary charges arising therein;

SECT. 11. They may make such necessary orders and by-laws, not repugnant to the laws of the state, for directing and managing the prudential affairs, preserving the peace and good order, and maintaining the internal police thereof, as they may judge most conducive to the welfare of the town; and may affix penalties for breaches of such orders and by-laws not exceeding twenty dollars for one offence. 97 Mass. 228.

SECT. 12. All penalties for breaches of the orders and by-laws of a town may be recovered on complaint before a police court or a justice of the peace, and shall inure to the town, or to such uses as the town may direct.

may make by-laws, and affix penalties.  
R. S. 15, § 13.  
1847, 166.  
3 Pick. 402.  
1 Met. 130.  
1 Cush. 494.  
2 Cush. 582.  
12 Gray, 161.  
14 Gray, 52.  
1 Allen, 158.  
Penalties, how recovered.  
R. S. 15, § 13.  
See Ch. 122, § 11.

SECT. 13. When a town in a by-law imposes a duty and affixes a penalty for refusal or neglect to perform the same, they may therein provide that in case of such refusal or neglect the duty may be performed by officers therein named, at the expense of the party liable to perform the same, and such expense may be recovered of him by the town in an action of contract in the name of the treasurer, but the amount recovered shall not exceed the penalty fixed in the by-law.

SECT. 14. Before any by-law takes effect, it shall be approved by the superior court, or in vacation by a justice thereof, and shall with such approval be entered and recorded in the office of the clerk of the courts in the county where the town is situated, or in the county of Suffolk in the office of the clerk of the superior court for civil business.

SECT. 15. Such by-laws shall be binding upon all persons coming within the limits of the town, as well as upon the inhabitants thereof.

SECT. 16. All by-laws made by a town shall be published in one or more newspapers printed in the county where the town is situated.

SECT. 17. Each town shall provide at its own expense some suitable cabinet or book-case for the safe preservation of such books, reports, and laws, as they receive from the commonwealth, and for every month's neglect shall forfeit ten dollars to the use of the commonwealth.

SECT. 18. When a town is required to enter into a recognizance, the selectmen may by an order or vote authorize any person to enter into the recognizance in the name and behalf of the town, and it shall be binding like any other contract made by such town. No surety shall be required in such recognizance.

#### MEETINGS.

SECT. 19. Every male citizen of twenty-one years of age and upwards, (except paupers, persons under guardianship, and persons excluded by articles twenty and twenty-three of the amendments to the constitution,) who has resided within the state one year, and within the town in which he claims a right to vote six months, next preceding a meeting for the transaction of town affairs, and who has paid by himself, or his parent, master, or guardian, a state or county tax, which within two years next preceding such meeting has been assessed upon him in any town; and every citizen who is by law exempted from taxation, and in all other respects qualified as aforesaid, shall have a right to vote at such town meetings, upon all questions concerning town affairs; and no other person shall be entitled to vote at such meeting.

SECT. 20. The annual meeting of each town shall be held in February, March, or April; and other meetings at such times as the selectmen may order. Meetings may be adjourned from time to time, and

shall be held in pursuance of a warrant, directed to the constables or selectmen for that purpose, who in the manner prescribed by the by-laws may by the same warrant call for distinct purposes.

At the time and place of the meeting, the selectmen shall insert in writing, be requested of them by any person, nothing acted upon shall have a legal effect unless the same is contained in the warrant. If any person reasonably refuse to call a meeting, any person upon the application of ten or more persons may call a meeting by a warrant under his

Duties imposed in by-laws, how performed.  
1855, 287.

By-laws to be approved by superior court.  
R. S. 15, § 13.  
1847, 166  
1855, 222, §§ 1, 2.  
1857, 82.  
1859, 193.  
2 Cush 335.

to bind all persons in town.  
R. S. 15, § 14.  
6 Pick. 187.  
2 Cush 575.  
to be published.  
R. S. 15, § 15.  
Towns to provide book-case, &c.  
1858, 108, §§ 1, 2.

Recognizances by towns.  
R. S. 15, §§ 68, 69.  
Act of amendment, § 4.

Qualifications of voters in town affairs.  
Amend. const. art. 8, 20, 23.  
R. S. 15, § 17.  
11 Pick 538.  
5 Met. 182, 298, 591.  
7 Gray, 299.

Annual and other meetings may be adjourned.  
R. S. 15, §§ 18, 25.  
1837, 52.

Warrants to issue for all meetings may include two or more meetings.  
R. S. 15, §§ 19, 20.  
10 Mass. 105.  
13 Pick 393.  
6 Met. 340.  
11 Cush 294.  
Contents of warrant, &c.  
R. S. 15, §§ 21, 22.

1 Cush 496.  
11 Cush 293, 487.  
8 Gray, 523.  
11 Gray, 340.  
11 Allen, 89.  
99 Mass 472.  
If selectmen refuse, meeting may be called by

*9th Mass. 417*

*117 Mass. 354*

a justice of the peace.  
R. S. 15, § 22.

If major part of selectmen die, &c., the rest may call meetings.  
R. S. 15, § 24.

hand directed to the constables of the town, if any, otherwise to any of the persons applying therefor, directing them to summon the inhabitants qualified to vote in town affairs to assemble at the time and place and for the purposes expressed in the warrant.

SECT. 24. If by reason of death, resignation, or removal from town, a major part of the selectmen thereof originally chosen vacate their office, those who remain in office may call a town meeting.

#### Moderators.

Moderators, how chosen;  
R. S. 15, § 28.  
See 1863, 188.  
during election, town clerk to preside, &c.  
R. S. 15, § 27.  
9 Mass. 242.

SECT. 25. At every town meeting, except for the election of nationals, state, district, and county officers, a moderator shall first be chosen.

SECT. 26. During the election of a moderator, the town clerk if present shall preside; if he is absent or there is no town clerk, the selectmen shall preside; and the town clerk and selectmen respectively shall in such case have the powers and perform the duties of a moderator.

powers and duties.  
R. S. 15, §§ 28, 32.

SECT. 27. The moderator shall preside in the meeting, may in open meeting administer the oaths of office to any town officer chosen thereat, shall regulate the business and proceedings of the meeting, decide all questions of order, and make public declaration of all votes passed. When a vote so declared by him is immediately upon such declaration questioned by seven or more of the voters present, he shall make the vote certain by polling the voters or dividing the meeting, unless the town has by a previous vote or their by-laws otherwise provided.

no person to speak without leave of, &c.  
R. S. 15, § 29.  
Penalty for disorderly conduct in meetings.  
R. S. 15, § 30.  
16 Mass. 335.

SECT. 28. No person shall speak in the meeting without leave of the moderator, nor while another person is speaking by his permission; and all persons shall at his request be silent.

SECT. 29. If a person behaves in a disorderly manner, and after notice from the moderator persists therein, the moderator may order him to withdraw from the meeting; and, on his refusal, may order the constables or any other persons to take him from the meeting and confine him in some convenient place until the meeting is adjourned. The person so refusing to withdraw shall for such offence forfeit a sum not exceeding twenty dollars.

on moderator, &c., for reading, &c., ballots, before poll is closed.  
R. S. 15, § 31.

SECT. 30. A moderator or other presiding officer who at a town meeting, before the poll is closed and without the consent of the voter, reads, examines, or permits to be read or examined, the names written on such voter's ballot, with a view to ascertain the candidate voted for by him, shall forfeit a sum not exceeding fifty dollars.

#### ELECTION AND APPOINTMENT OF TOWN OFFICERS.

Town officers to be chosen.  
R. S. 17, § 23.  
R. S. 10, § 16.  
1863, 164.  
Town clerk.

SECT. 31. At the annual meeting every town shall choose from the inhabitants thereof, the following town officers, who shall serve during the year, and until others are chosen and qualified in their stead: —

A town clerk, who if present shall be forthwith sworn, either by the moderator or a justice of the peace;

Selectmen.

Three, five, seven, or nine selectmen;

Assessors.  
6 Met. 498.

Three or more assessors, and, if the town deems it expedient, three or more assistant-assessors;

Overseers of the poor.

Three or more overseers of the poor;

Treasurer.

A town treasurer;

Surveyors of highways.  
Constables and collectors.

One or more surveyors of highways;

Constables, who shall also be collectors of taxes unless other persons are specially chosen collectors;

Field drivers.

Field drivers;

Fence viewers.

Two or more fence viewers;

Surveyors of

One or more surveyors of lumber; except that surveyors of lumber

shall not be so chosen in towns included in the district established by chapter forty-nine, section one hundred twenty-[six] [one]:

Measurers of wood and bark, unless the town authorizes the selectmen to appoint them; and

All other usual town officers.

All the town officers designated by name in this section shall be sworn.

SECT. 32. The election of town clerks, selectmen, assessors, treasurer, constables, and the moderator of the meetings held for the choice of town officers, shall be by written ballots; and the election of all other town officers in such mode as the meeting determines, except in cases otherwise provided by law.

lumber.  
1859, 224.  
18 Gray, 196.  
Measurers of  
wood, &c.

Other officers.

Officers to be  
sworn.

Certain officers to  
be chosen by bal-  
lot.  
R. S. 15, § 34.  
1851, 94, § 8.  
7 Gray, 131.  
See 1862, 180.  
1863, 198.  
2 Allen, 594.  
If person elected  
constable does  
not accept.  
R. S. 15, § 67.

constable shall, if present, forthwith  
the office. If he does not accept,  
tion until some one accepts the

to make choice of selectmen or  
commonwealth a sum not exceed-  
ndred dollars, as the county com-

Penalty for not  
choosing select-  
men, &c.  
R. S. 15, § 35.

meeting, fails to elect a full board  
chosen refuse to act or omit to be  
en or selectman chosen and quali-  
ings until a full board is elected.

Town meetings,  
how called in cer-  
tain cases.  
1855, 8.

oose selectmen or assessors, or if  
trust, or having accepted it shall  
mmissioners may appoint three or  
nty, to be assessors of taxes for  
s, perform the duties, and receive  
by a town.

County commis-  
sioners may ap-  
point assessors in  
certain cases.  
R. S. 15, §§ 86,  
87.

town shall annually in March or  
ers, unless the inhabitants at their

Officers ap-  
pointed by select-  
men.  
R. S. 15, § 88.  
R. S. 30, § 12, 18.  
See 1863, 173.  
1863, 179, § 5.  
1864, 174.  
1865, 234.  
Sealer of weights  
and measures,  
&c.  
Measurers of  
wood and bark.

, and as many more as the inhab-  
nine, and they may also appoint a  
electmen may at any time remove  
thers in their places;  
d as many more as the inhabitants

Superintendent  
of hay-scales.

1 scales for the weighing of hay,  
rintendence thereof.

ppoint police officers, with all or  
pt the power of serving and exe-  
heir offices during the pleasure of  
inted.

Selectmen may  
appoint police  
officers.  
1851, 162.  
4 Gray, 84.  
See 1867, 279.  
1871, 331.  
98 Mass. 5.  
99 Mass. 592.  
103 Mass. 444.  
Town clerks, to  
give notice to  
persons elected,  
that they may be  
sworn, &c.  
R. S. 15, § 39.  
6 Gray, 337.  
7 Gray, 131.

pointment of town officers who are  
town clerk shall forthwith make  
all such persons not sworn by the  
offices to which they are chosen,  
nt to a constable, requiring him  
such persons to appear and take  
rk within seven days after such  
n seven days make return of the

l summoned, who is not exempt by  
e is elected, shall not within seven  
town clerk, or before a justice of  
rk a certificate thereof under the  
the office to which he is chosen is

Penalty for not  
taking the oath  
of office.  
R. S. 15, § 40.  
7 Gray, 131.

that of constable or some other for which a different penalty is provided, forfeit five dollars.

Offices vacated by removal from town.

R. S. 15, § 41.  
1 Pick. 129.  
Selectmen to appoint temporary treasurer and collector.  
1833, 43.  
1 Met. 524.  
4 Gray, 263.  
See 1866, 224.

Vacancies in town offices, how filled.

R. S. 15, § 42.  
1856, 8.  
See 1864, 174.

Exemption from liability to hold town offices.

R. S. 15, §§ 48, 69.  
R. S. 18, § 17.

Clerk to record all votes.

R. S. 15, § 44.  
13 Pick. 306.  
See 1870, 64.  
3 Allen, 409.

to administer oaths and make record thereof.  
R. S. 15, § 45.

Town clerk, pro tem., when chosen.

R. S. 15, § 49.

When selectmen may appoint town clerk, &c.  
R. S. 15, §§ 50, 51.

Penalty for selectmen acting if not under oath.

R. S. 15, § 54.  
Selectmen to be assessors, &c., in case, &c.  
R. S. 15, §§ 52, 53.

SECT. 41. A person removing from the town in which he holds a town office, thereby vacates such office.

SECT. 42. When the office of treasurer or collector of taxes is vacant by reason of death, removal, or other cause, or when the treasurer or collector is prevented from performing the duties of his office, the selectmen of the town may by writing under their hands appoint a treasurer or collector pro tempore, who shall be sworn and give bonds in like manner as treasurers and collectors chosen by towns, and hold his office until another is chosen.

SECT. 43. When a vacancy occurs in a town office by reason of the non-acceptance, death, removal, insanity, or other disability, of a person chosen thereto, or by reason of a failure to elect, the town may fill such vacancy by a new choice at any legal meeting.

SECT. 44. No person shall be obliged to serve in the same town office two years successively; and no person in commission for any office of this state or of the United States, or who is a minister of the gospel, or a member of the council, senate, or house of representatives, or an engineman or member of a fire department, or who has been a constable or collector of taxes of a town within seven years next preceding, shall be obliged to accept the office of constable.

#### CLERK.

SECT. 45. The town clerk shall record all votes passed at the meeting at which he is elected, and at the other meetings held during his continuance in office.

SECT. 46. He shall administer the oaths of office to all town officers who appear before him for that purpose, and shall make a record thereof, and of oaths of office taken before justices of the peace, of which certificates are filed.

SECT. 47. When at a town meeting there is a vacancy in the office of town clerk, or he is not present, the selectmen shall call upon the qualified voters present to elect a clerk pro tempore, in like manner as town clerks are chosen. The selectmen shall sort and count the votes and declare the election of such clerk, who shall be sworn to discharge the duties of said office at such meeting; and be subject to like penalties for not discharging them as town clerks are for neglect of the like duties.

SECT. 48. When other duties than those mentioned in the preceding section are required to be performed by the town clerk, and by reason of death, removal, or other cause, there is a vacancy in such office, or such clerk is prevented from performing such duties, the selectmen may in writing under their hands appoint a clerk for the performance thereof, who shall be sworn, and immediately after entering upon the duties of his office make a record of such election or appointment.

#### SELECTMEN.

SECT. 49. Every person elected selectman, who enters upon the performance of his duties before taking the oath of office, shall forfeit for each offence a sum not exceeding one hundred dollars.

SECT. 50. The selectmen shall be assessors of taxes and overseers of the poor in towns where other persons are not specially chosen to those offices, and when acting as assessors they shall take the oath required of assessors.



## ASSESSORS OF TAXES.

SECT. 51. The assessors' oath of office shall be in substance as follows —

for,] for the town of for the  
tially, according to your best skill and judgment,  
you are during that time directed to assess,  
er duties of said office.

See 1861, 167,  
171.  
1864, 208.  
1865, 288.  
Assessors' oath.  
R. S. 15, § 55.

When chosen, shall be sworn, and shall  
assist the assessors in taking a list  
the value of the real and personal  
and in making out lists of persons

Assistant-assess-  
ors to be sworn.  
R. S. 15, § 56.

Assessor, having notice of his election,  
shall forfeit a sum not exceeding

Penalty on as-  
sessor neglecting  
to take oath.  
R. S. 15, § 57.

## TREASURER.

shall give bond in such sum as the  
their satisfaction, for the faithful dis-  
shall receive and take charge of all  
own, and pay over and account for  
of such town or the officers thereof

Town treasurer,  
duties of.  
R. S. 15, § 58.  
8 Cush. 229.  
12 Cush. 112.

name and official capacity prosecute  
curities, given to him or his prede-  
r provision is specially made, shall  
es which inure to his town or the

to bring suit,  
&c.  
to prosecute  
for forfeitures,  
except, &c.  
R. S. 15, §§ 59,  
60.

trespasses committed on any public  
his town; and when a public build-  
d partly by the county, such prose-  
own or county treasurer, whichever

for trespasses  
on public prop-  
erty.  
R. S. 14, § 54.  
R. S. 15, § 62.

meeting appoint its treasurer col-  
deputies, who shall give such bonds  
nty, as the selectmen think proper.  
ve the same powers as are vested in

may be collect-  
or of taxes.  
R. S. 15, § 60.  
8 Met. 102.

1874 c. 28, § 1

ted collector, may issue his warrant  
deputy, or to any constable of the  
e property or take the body of any  
ayment of taxes, and to proceed in  
ed to do in like cases.

power and duty  
as collector  
R. S. 15, § 61.  
100 Mass. 172.

1874 c. 28, § 2

nnually render a true account of all  
er official doings, to the town, and  
his services as the town may deter-

to account an-  
nually. Pny.  
R. S. 15, §§ 64,  
65.

## CONSTABLES.

e office of constable, able to perform  
who refuses to take the oath and to  
nty dollars. If he is present in town  
neglects for seven days after being  
ce or to pay such fine, he shall be

Penalty for re-  
fusing to serve as  
constable, &c.  
R. S. 15, §§ 66,  
68.

ves to the inhabitants of the town  
sureties in a sum not less than five  
of the selectmen, with condition for

Constables giving  
bonds may serve  
civil process in  
certain cases.

1847, 98, § 2.  
 1861, 94, §§ 1, 2.  
 18 Met. 302.  
 2 Gray, 209  
 See 1860, 147.  
 1864, 50.  
 1866, 261, 292.  
 1869, 247.  
 1870, 149.  
 1872, 238.  
 1876, 74

Time of filing  
 bond to be noted.  
 Remedies on  
 bond, &c.  
 1845, 70, §§ 1, 2,  
 8.  
 1861, 94, §§ 2, 8.  
 13 Gray, 384.  
 7 Allen, 387.  
 103 Mass. 282.

Constables may  
 serve certain  
 writs, &c.  
 R. S. 15, § 72.

may serve cer-  
 tain demands  
 and notices.

may require  
 aid — not to act  
 as council, &c.  
 R. S. 14, §§ 72,  
 79, 80.  
 R. S. 15, § 77.  
 6 Pick. 458.

to execute war-  
 rants of select-  
 men.  
 R. S. 15, § 70.  
 to complain of  
 breaches of cer-  
 tain laws.  
 R. S. 15, § 78.

may convey  
 persons, &c., to  
 jail, &c., out of  
 their town.  
 R. S. 15, § 75.

may serve war-  
 rants in certain  
 cases, in any  
 place in state.  
 1847, 98, § 1.  
 98 Mass. 6.

may serve pro-  
 cesses in unin-  
 corporated places,  
 &c.  
 R. S. 15, § 74.

Collectors of  
 taxes, when con-  
 stables to be.  
 R. S. 15, §§ 60,  
 78.

to give bond.  
 R. S. 15, § 80.  
 9 Met. 440.  
 6 Cush. 229.

the faithful performance of his duties in the service of all civil processes committed to him, and causes the same, with the approval of the selectmen indorsed thereon, to be filed in the office of the town clerk, may, within his town, serve any writ or other process in a personal action in which the damages are not laid at a greater sum than one hundred dollars, and any process in replevin in which the subject matter does not exceed in value one hundred dollars, and any writ or other process under the provisions of chapter one hundred and thirty-seven; and no constable shall serve any process in a civil action until he gives such bond.

SECT. 62. The town clerk shall note upon every bond given by a constable the time when the same was filed. Any person injured by a breach of the condition of such bond, may at his own expense institute a suit thereon in the name of the town, and like proceedings shall be had as in a suit by a creditor on an administration bond. The writ shall be indorsed by the persons for whose benefit the suit is brought, and if neither of them is an inhabitant of this state, it shall also be indorsed by some other responsible indorser residing in this state. If judgment is for the defendants, execution shall issue for costs against the indorsers, as if they were plaintiffs of record.

SECT. 63. Constables may serve such writs and processes as are described in section sixty-one, and warrants and other processes in criminal cases, although their town, parish, religious society, or school district, is a party or interested.

SECT. 64. They may serve by copy by them attested, all demands, notices, and citations, and their returns of service thereof shall be prima facie evidence; but this provision shall not exclude the service thereof by other parties.

SECT. 65. They may, like sheriffs, require aid in the execution of their duties. They shall not appear in court or before a justice of the peace as attorney or counsel for any party. The provisions of sections sixty-four and sixty-seven of chapter seventeen shall apply to constables.

SECT. 66. They shall serve all warrants and other processes, lawfully directed to them by the selectmen of their town, for notifying town meetings or for other purposes.

SECT. 67. They shall take due notice of and prosecute all violations of the laws respecting the observance of the Lord's day, to prevent profane swearing, and against gaming.

SECT. 68. A constable in the execution of a warrant or writ directed to him, may convey beyond the limits of his town, prisoners and property in his custody under such process, either to the justice who issued it, or to the common jail or house of correction of his county.

SECT. 69. If a person against whom a warrant is issued for an alleged offence committed within any town, before or after the issuing of the warrant, escapes from or is out of the town, any constable of such town to whom the warrant is directed, may pursue and apprehend him in any place in the commonwealth.

SECT. 70. When an unincorporated place is annexed to a town for the purpose of taxation, the constables of such town shall have and exercise in such unincorporated place the same powers as if it were a part of their town.

#### COLLECTORS OF TAXES.

SECT. 71. Towns may choose suitable persons to be collectors of taxes therein. If the persons chosen refuse to serve, or if no person is elected or appointed, the constables of the town shall be the collectors of taxes.

6 Gray, 387, 502.

7 Gray, 132.

SECT. 72. Every collector shall give bond to the town, in such sum as the selectmen require, and with sureties to their satisfaction, for the faithful discharge of the duties of his office.

2 Gray, 296.

12 Cush. 112.

See 1865, 294.

8 Gray, 612.

SECT. 73. Any town, at a meeting notified for that purpose, may authorize their collector to use all means of collecting the taxes which a town treasurer when appointed collector may use.

Town may give collector certain powers of treasurer, in collecting taxes.  
1860, 67.  
99 Mass. 472.  
100 Mass. 172.

#### SURVEYORS OF HIGHWAYS.

SECT. 74. If a person chosen surveyor of highways refuses to serve, in dollars; but no person shall be three years.

Penalty for refusing to serve as surveyor of highways.  
R. S. 15, § 81.

Who neglects the duties of his office neglect; and he may be prosecuted in the highways within his limits

Penalty on surveyors for neglect of duty.  
R. S. 15, §§ 82, 83.

to pay a fine for a deficiency in the surveyor through whose fault or he liable for the amount of such the town in an action of tort.

10 Met. 108.  
Surveyors liable to towns for deficiencies, in case, &c.  
R. S. 15, § 84.  
1892, 812.  
18 Gray, 347.

#### ITS.

incorporated by the name of districts, constable, shall have all the powers and duties, to which towns are entitled in this chapter.

Districts to have powers of towns.  
R. S. 15, § 9.

excepting such parts thereof as are otherwise annexed to the towns of the district, with all the powers, mentioned in the act establishing the same.

Provisions for the district of Marshpee  
1894, 186.  
R. S. 15, § 67.

#### STATE POWERS.

may raise by taxation or pledge of its money, for a purpose other than the exercise of power, the supreme judicial court of not less than ten taxable inhabitants, cause of complaint, hear and determine the justice of said court may in term make such orders and decrees as may be necessary to prevent any violation or abuse of the final determination of the cause.

Towns, how restrained from illegal appropriations of money, &c.  
1847, 87.  
8 Cush. 580.  
10 Cush. 252.  
1 Allen, 108, 109.  
8 Allen, 158.  
10 Allen, 570.  
99 Mass. 525.  
108 Mass. 94, 141.  
See 1863, 122.

#### FORFEITURES.

imposed by this chapter, except in cases recovered by complaint or indictment, or by action of tort to the use of the town.

Fines and forfeitures.  
R. S. 15, §§ 5, 30, 31, 40, 64, 67, 68, 81, 82.  
1839, 135.

§§ 16, 17), shall send copies of reports to State of vehicles through streets (1869, 301); may take water rights (1870, 98); may authorize villages employ watchmen and police officers (1870, 322); may make by-laws to prevent falling of snow from buildings walks (1868, 114); may make by-laws against fast days (1872, 84), and may make by-laws respecting

(1861, 165); for public defence (1863, 118, § 3); to purposes (1864, 108, 120), for conveying pupils to (1869, 381), and for care of soldiers' graves (1870,

Leto.  
Certain ordinances presented & may be  
1876 & 193

Exchange of bonds  
1876 - 238

166  
Appointments by Mayor & Aldermen.  
1876 & 80

CITIES.

[CHAP. 19.]

## CHAPTER 19.

Leto.

[See 1861, 165; 1863, 179, § 5; 1865, 81; 1867, 279; 1869, 72, 301; 1872, 140, 274.]

### OF CERTAIN POWERS AND DUTIES OF CITIES.

#### SECTION

1. Powers, &c., of cities to continue.
2. Laws relating to towns to apply to cities, &c.
3. Constables may be removed for misconduct.
4. When wards are divided, officers to act in same numerical wards till others are chosen.
5. Officers elected after division to hold till next annual meeting, &c.
- 28 6. Vacancies in board of mayor and aldermen by non-election — how filled.
- 214 7. If mayor is not elected, who to perform the duties.
8. Vacancies in city or ward offices — how filled.

#### SECTION

9. Ward officers, duties of, and proceedings in case of absence of.
10. Removal from ward not to disqualify city officers.
11. Five preceding sections to be in force only where adopted.
12. Mayor and aldermen, &c., may hold other offices.
13. City councils may regulate erection of buildings, &c.
14. Regulations of carriages.
15. City officers may prosecute, &c.
16. Divisions of wards in cities.
- 17 "Mayor and aldermen," in Boston, how construed.

of  
1861  
SECTION 1. The several cities shall continue to have and exercise all the powers and privileges, and be subject to all duties and liabilities, mentioned in the acts establishing such cities and in the several acts relating thereto.

to  
to  
17. SECT. 2. Chapter eighteen and all other laws relating to towns, shall apply to cities so far as they are not inconsistent with the general or special provisions relating thereto; and cities shall be subject to the liabilities, and city councils shall have the powers, of towns; the mayor and aldermen shall have the powers and be subject to the liabilities of selectmen, and the city clerks, treasurers, and other city officers, those of corresponding town officers, if no other provisions are made in relation thereto.

to  
to  
SECT. 3. The mayor of a city may, with consent of the board of aldermen, remove from office a constable for gross misconduct.

are  
to  
SECT. 4. At the first election held after a new division of wards in a city, the ward officers chosen under the preceding division shall officiate in the numerical ward for which they were chosen, and shall continue to act there until others are chosen and qualified in their stead.

at  
to  
SECT. 5. Officers chosen at a meeting called by the mayor and aldermen of a city, after such new division into wards, shall hold their offices until the next annual meeting, and until others are chosen and qualified in their stead.

of  
by  
1,2. SECT. 6. If, at or after the time for the mayor and aldermen of a city to enter upon the discharge of their duties, it appears that the mayor or the full number of aldermen are not elected, such of said officers as are elected shall issue warrants for the election of a mayor or such aldermen as may be necessary. If neither of said officers is elected, the president of the common council shall issue such warrants.

not  
to  
SECT. 7. If by reason of non-election there is no mayor of a city, the chairman of the board of aldermen shall discharge the duties of the office until a mayor is chosen and sworn.

city  
SECT. 8. When it appears to the mayor and aldermen, that there is a vacancy either in their board, the common council, or any city or ward office, to be filled by popular election, they shall issue their warrant for elections to fill such vacancy at such time and place as they deem advisable.

SECT. 9. Ward officers authorized to act at elections, shall attend and perform their respective duties at the times and places appointed for elections of officers, whether of the United States, state, city, or

wards, and shall make and sign the regular returns of the same. If a ward officer is absent from a meeting, the office may be filled, pro tempore, by the voters present, by nomination and hand vote if they so determine.

SECT. 10. City officers who were residents of the ward at the time of their election, shall discharge the duties of their offices notwithstanding their removal afterwards into any other ward of the city.

SECT. 11. The five preceding sections shall be in force in those cities only which have adopted chapter two hundred and seventeen of the statutes of eighteen hundred and forty-five, or which shall adopt said sections.

SECT. 12. The mayor and any alderman or member of the common council of a city which has adopted chapter seventy of the statutes of eighteen hundred and fifty-one, or which shall adopt this section, may at the same time hold any other office under the city government to which he may be chosen, except one of emolument.

SECT. 13. The city council of each city may make such rules and regulations for the erection and maintenance of balustrades, or other projections upon the roofs or sides of buildings therein, as the safety of the public requires, with penalties for the violation thereof, not exceeding twenty dollars for each offence; but no such rule or regulation shall take effect until the same has been published at least sixty days in some newspaper printed in the city or in the county in which the city is situated.

SECT. 14. The mayor and aldermen of a city may make rules and orders for the regulation of all carriages and vehicles used either wholly or in part therein, whether with or without animal power, with penalties for violations thereof, not exceeding twenty dollars for one offence; and may receive annually one dollar and no more for each license, granted by them to a person to set up and use any carriage or vehicle within such city. Such rules shall not take effect until they have been published at least one week in some newspaper published in the city or in the county in which the city is situated. This section shall not impair the right of a city to make by-laws relating to the subject.

SECT. 15. The city marshal or other (R) [principal] police officer, or the city treasurer, may prosecute for all fines and forfeitures which may inure to the city or the poor thereof, and may also prosecute for trespasses committed on any public building or enclosure within the limits of the city.

SECT. 16. No new division of wards in any city comprising more than one representative district, shall be made previously to the next apportionment of senators and representatives.

SECT. 17. In laws relating to cities, the words mayor and aldermen of Boston, unless provision is otherwise made of aldermen.

Ward officers  
pro tempore.

Removal from  
ward not to dis-  
qualify city offi-  
cers.

1845, 217, § 5.

See § 11.

Five preceding  
sections where in  
force.

1845, 217, § 1.

Mayor, &c., may  
hold other offices,  
&c.

1851, 70, §§ 1, 2.

City councils  
may regulate  
erection of bal-  
ustrades, &c.

1848, 278.

12 Gray, 161.

117 m. 114

Regulations of  
carriages.

1847, 224, §§ 1, 2.

1850, 275.

2 Cush. 562.

sheds. Itinerant  
musicians  
1875-186

City officers may  
prosecute, &c.

R. H. 15, § 63.

1854, 87.

1854, 419.

(R.) Struck out  
by 1870, 227.

111 m. 407

Division of wards  
in cities.

1857, 809, § 2.

See 1855, 7.

"Mayor and al-  
dermen," in  
Boston, how  
construed.

1854, 443, § 32.

'ER 20. 1874, 386

titute, see 1865, 69.)

CENSUS.

1875, 232

Section

3. Secretary to furnish blanks, &c.

4. Penalties.

taken in the several cities and towns,  
lred and sixty-five and every tenth  
abitants, ratable polls, and voters as  
of the same year; distinguishing in

Census to be  
taken in 1865,  
and every tenth  
year after, &c.

Amend. const.  
arts. 12, 13, 21,  
22.  
1855, 439, § 2.  
1857, 60, § 1.

Census, by whom  
taken.  
Returns, &c.  
1857, 60, § 2.

Secretary to fur-  
nish blanks, &c.  
1857, 60, § 4.

Penalties.  
1857, 60, § 2.

the enumeration of the inhabitants, the males and females, the color of each, the ages within decennial periods, the natives, the foreigners, naturalized voters, and the country in which the foreigners were born; and in the enumeration of the voters of cities, the number in each ward.]

SECT. 2. (R.) [The census shall be taken in cities by agents appointed by the mayor and aldermen, and in towns by the assessors. Such agents and assessors shall be sworn, shall make out in words at length a return of the result of said census, and shall sign and make oath to the truth thereof; and a certificate of the oath by the magistrate administering it shall be annexed thereto. They shall, on or before the twentieth day of June of the same year, deliver the return to the sheriff of the county, who shall transmit it to the office of the secretary of the commonwealth on or before the last day of said June; or the agents or assessors may themselves transmit the return to the office of the secretary on or before the day last named.]

SECT. 3. (R.) [The secretary shall, on or before the first day of May of each year in which the census is to be taken, transmit to the clerks of the several cities and towns, printed forms for the returns required by this chapter, and shall annex thereto a notice that the returns must be made into his office on or before the last day of June.]

SECT. 4. (R.) [If an agent or assessor wilfully refuses or neglects to perform any duty required of him by this chapter, he shall forfeit a sum not exceeding five hundred dollars, and if he is guilty of wilful deceit or falsehood in the discharge of his duty, he shall forfeit a sum not exceeding two thousand dollars or be imprisoned not exceeding one year. A sheriff who wilfully refuses or neglects to perform the duty required of him by this chapter, shall forfeit not exceeding one thousand dollars.]

## CHAPTER 21.

[See 1863, 240, § 8; 1866, 138; 1872, 275.]

### OF THE REGISTRY AND RETURNS OF BIRTHS, MARRIAGES, AND DEATHS.

#### SECTION

1. City and town clerks to record births, marriages, and deaths.
2. Parents and others to give notice of births and deaths.
3. Physician to certify, &c. Penalty.
4. Sextons and others to make returns to city and town clerks. Clerks to give certificates. Penalties.
5. Clerk to transmit copies of records to secretary.
6. record of, to be evidence.

#### SECTION

7. Clerk, fees of, &c. Penalty.
8. Superintendents of state almshouses to record, return, &c., facts in relation to births, &c.
9. Secretary to furnish blank books and forms for returns.
10. to cause returns to be bound, &c.; to report to legislature, &c.
11. Registrars may be chosen in certain cases.
12. Secretary to prosecute for penalty.
13. Towns may make additional rules, &c.

City and town  
clerks to record  
births, marriages,  
and deaths.  
R. 2, 15, § 46.  
1844, 159, § 1.  
1849, 202, § 1.  
See 1872, 275.

SECTION 1. The clerk of each city and town shall receive or obtain, and record and index, the following facts concerning the births, marriages, and deaths, therein, separately numbering and recording the same in the order in which he receives them, designating in separate columns;

In the record of births, the date of the birth, the place of birth, the name of the child, (if it have any,) the sex and color of the child, the names and the places of birth of the parents, the occupation of the father, the residence of the parents, and the date of the record;

In the record of marriages, the date of the marriage, the place of marriage, the name, residence, and official station of the person by whom married, the names and the places of birth of the parties, the residence of each, the age and color of each, the condition of each, (whether single or widowed,) the occupation, the names of the parents, and the date of the record;

In the record of deaths, the date of the death, the name of the deceased, the sex, the color, the condition, (whether single, widowed, or married,) the age, the residence, the occupation, the place of death, the place of birth, the names and places of birth of the parents, the disease or cause of death, the place of burial, and the date of the record.

SECT. 2. Parents shall give notice to the clerk of their city or town of the births and deaths of their children; every householder shall give like notice of every birth and death happening in his house; the eldest person next of kin shall give such notice of the death of his kindred; the keeper of a workhouse, house of correction, prison, hospital, or almshouse, except the state almshouses at Tewksbury, Bridgewater, and Monson, and the master or other commanding officer of any ship shall give like notice of every birth and death happening among the persons under his charge. Whoever neglects to give such notice for the space of six months after a birth or death, shall forfeit a sum not exceeding five dollars.

Parents and others to give notice of births and deaths.  
R. 8 15, § 47.  
1839, 135.  
1855, 366.  
See 1866, 188.  
1872, 275.

1873 c. 341

SECT. 3. Any physician having attended a person during his last illness, shall, when requested within fifteen days after the decease of such person, forthwith furnish for registration a certificate of the duration of the last sickness, the disease of which the person died, and the date of his decease, as nearly as he can state the same. If any physician refuses or neglects to make such certificate, he shall forfeit and pay the sum of ten dollars to the use of the town in which he resides.

Physician to certify, &c.  
Penalty.

SECT. 4. Every sexton, undertaker, or other person having charge of a burial-ground, or the superintendent of burials having charge of the obsequies or funeral rites preliminary to the interment of a human body, shall forthwith obtain and return to the clerk of the city or town in which the deceased resided or the death occurred, the facts required by this chapter to be recorded by said officer concerning the deceased, and the person making such return shall receive from his city or town the fee of ten cents therefor.

Sextons and others to make returns to city and town clerks.  
Penalties.  
1844, 159, § 1.  
1849, 302, § 2.  
See 1872, 275.

1873 c. 202

The clerk, upon recording such facts, shall forthwith give to the person making such return, a certificate that such return has been made, which certificate such person shall deliver to the person having charge of the interment, if other than himself, before the burial when practicable, otherwise within seven days thereafter. When a burial takes place and no certificate is delivered as aforesaid, the sexton, undertaker, or other person having charge of the interment, shall forthwith give notice thereof to the clerk under penalty of twenty dollars.

Clerk to give certificate.

SECT. 5. The clerk of each city and town shall annually on or before the first day of February, transmit to the secretary of the commonwealth, certified copies of the records of the births, marriages, and deaths, which ending on the last day of the pre-

to transmit copies to secretary of state.  
1844, 159, § 1.  
1849, 302, § 5.

March 1874-21-

clerk relative to any birth, marriage, or death, in legal proceedings, of record, and signed by the town clerk for the use of any such record.

record of, to be evidence.

in his city or town for obtaining, the secretary of the commonwealth, twenty cents; a marriage, ten of the first twenty entries, and the same shall be certified by but a city or town containing may limit the aggregate compensation for each refusal or neglect to perform the duties of this chapter.

Fee of, &c.  
Penalty.  
1849, 302, §§ 2, 3.  
See 1866, 188.

1873 c. 143

the state almshouses at Tewksbury, and record, and make return of, the

Superintendents of state almshouses.

houses to record, return, &c., facts, in relation to births, &c.  
1856, 366.

Secretary to furnish blank books and forms for returns.  
1844, 159, §§ 6, 7.  
1849, 202, § 5.

to cause returns to be bound, &c. to report to legislature, &c.  
1844, 159, § 7.  
1849, 202, § 5.

Registrars may be chosen in certain cases.  
1849, 202, § 1.  
See 1866, 188.

Secretary to prosecute for penalty.

Towns may make additional rules, &c.

facts in relation to the births and deaths which occur in their respective institutions, in like manner as is required of town clerks. The clerks of said towns shall, in relation to the births and deaths of persons in said almshouses, be exempt from the duties otherwise required of them by this chapter.

SECT. 9. The secretary shall at the expense of the commonwealth prepare and furnish to the clerks of the several cities and towns, and to the superintendents of the state almshouses, blank books of suitable quality and size to be used as books of record under this chapter, blank books for indexes thereto, and blank forms for returns, on paper of uniform size; and shall accompany the same with such instructions and explanations as may be necessary and useful. City and town clerks shall make such distribution of blank forms of returns furnished by the secretary as he shall direct.

SECT. 10. The secretary shall cause the returns received by him for each year to be bound together in one or more volumes with indexes thereto. He shall prepare from the returns such tabular results as will render them of practical utility, make report thereof annually to the legislature, and do all other acts necessary to carry into effect the provisions of this chapter.

SECT. 11. Any city or town containing more than ten thousand inhabitants, may choose a person other than the clerk to be registrar, who shall be sworn, and to whom all the provisions of this chapter concerning clerks shall apply. The returns and notices required to be made and given to clerks shall be made and given to such registrar under like penalties.

SECT. 12. The secretary of this commonwealth shall prosecute, by an action of tort, in the name of the commonwealth, for the recovery of any penalty or forfeiture imposed by this [chapter] [act].

SECT. 13. Any city or town may make rules and regulations to enforce the provisions of this chapter, or to secure a more perfect registration of births, marriages, and deaths, therein.

## CHAPTER 22.

[See 1864, 807; 1867, 209.]

### OF WORKHOUSES AND ALMSHOUSES.

#### SECTION

1. Cities and towns may provide workhouses or almshouses. Persons who may be committed thereto.
2. not to erect almshouse, &c., in any other place without consent, &c.
3. Directors of workhouse, master, &c.
4. Meetings of directors.
5. Cities and towns may provide a workhouse, &c., in common.
6. Joint board of directors.
7. Each place to choose three directors, &c.
8. Quarterly and other meetings of the directors.
9. Board may choose moderator and clerk.
10. may make by-laws, &c. May allow compensation to master and assistants.
11. may act upon other matters.
12. Compensation of master, &c., to be paid by places interested.

#### SECTION

13. Remedy against places neglecting to pay.
14. Cities and towns not to send more than their proportion, in case, &c.
15. Any place refusing to contribute to expenses shall not use the house.
16. Each place may furnish materials, &c., for persons committed by its authority.
17. Masters to keep register of persons committed, &c.
18. Controversies between master and overseers, how determined.
19. Profits and earnings, how appropriated.
20. How persons may be discharged.
21. Persons committed to be kept employed. Discipline.
22. Provisions respecting foreigners committed.
23. Workhouses may be discontinued.
24. Construction of this chapter.

Cities and towns may provide

SECTION 1. A city or town may erect or provide a workhouse or almshouse for the employment and support of poor and indigent per-



sons who are maintained by or receive alms from the city or town; persons who, being able of body to work and not having estate or means otherwise to maintain themselves, refuse or neglect to work; persons who live a dissolute, vagrant life, and exercise no ordinary calling or lawful business; persons who spend their time and property in public houses to the neglect of their proper business, or who, by otherwise mispending what they earn to the impoverishment of themselves and their families, are likely to become chargeable to the city or town; and other persons sent thereto under any provisions of law.

SECT. 2. No city or town shall erect or maintain an almshouse or house of correction within the limits of any other place, without the consent of such other place.

SECT. 3. Every city or town having a workhouse or almshouse may annually choose three, five, seven, or more directors, who shall have the inspection and government thereof, and who may appoint a master and necessary assistants, for the more immediate care and superintendence of the persons received or employed therein. Where such directors are not specially chosen, the overseers of the poor shall be the directors.

SECT. 4. Once in every month, and at other times as occasion may require, the directors shall hold meetings for the purpose of determining the most eligible mode of discharging their duties. At such monthly meetings they may make needful orders and regulations for the house, which shall be binding until the next meeting of the town or of the city council, when the same shall be submitted to such meeting, and if approved shall remain in force until revoked by the town or the city council.

SECT. 5. Any number of cities or towns may at their joint charge and for their common use erect or provide a workhouse or almshouse, and purchase land for the use thereof.

SECT. 6. The ordering, governing, and repairing, of such house, the appointment of a master and necessary assistants, and the power of removing them for misconduct, incapacity, or other sufficient cause, shall be vested in a joint board of directors, who shall be chosen annually by the several places interested.

SECT. 7. Unless all the places interested in such house shall agree to choose a different number, each of them shall choose three members of the board; and in case of the death of a director, or of his removal from the place for which he was chosen, the vacancy may be supplied by such place. If a place neglects to choose directors, those chosen by the other places shall have the whole charge of the house.

SECT. 8. Stated quarterly meetings of the board shall be holden on the first Tuesdays of January, April, July, and October, at the workhouse or almshouse under their charge, for the purpose of inspecting the management and directing the business thereof. Meetings of the board may be called at other times by the directors chosen by any place interested, they giving notice of the time and purpose thereof to the other members of the board in such manner as shall have been agreed upon at a stated meeting.

SECT. 9. The board of directors may choose a moderator; and at their first general meeting they shall appoint a clerk, who shall be sworn and shall record all votes and orders of the board.

SECT. 10. At a general quarterly meeting, if one-half of the members are present, they may make reasonable orders and by-laws not repugnant to the laws of the commonwealth for ordering and regulating the house under their charge, and may agree with the master and assistants, and order a suitable compensation for their services.

SECT. 11. Other matters may be acted upon at any other meeting duly notified, if one-third of the members are present; but the doings of such meetings may be altered or revised at any general stated meeting.

workhouses or almshouses. Persons who may be committed thereto. R. S. 16, § 1. R. S. 46, § 4. 1867, 153. 8 Allen, 73.

Towns, &c., not to erect almshouse, &c., in other place, &c. 1848, 201.

Directors of workhouse, master, &c. R. S. 16, §§ 2, 3.

Meetings of directors. R. S. 16, § 4.

Towns may jointly provide workhouse. R. S. 16, § 5.

Joint board of directors. R. S. 16, § 6.

Each place to choose three directors, &c. R. S. 16, §§ 7, 8.

Quarterly and other meetings of directors. R. S. 16, § 9.

Board may choose moderator and clerk. R. S. 16, § 10.

may make by-laws, &c. may allow compensation to master, &c. R. S. 16, §§ 11, 12.

may act upon other matters. R. S. 16, § 12.

Compensation of master, &c., to be paid by places interested.  
R. S. 16, § 18.

SECT. 12. The yearly compensation of the master and assistants, (in addition to the allowance hereafter provided in this chapter for their services,) and also the expense of keeping the house in repair, shall be paid by the several places interested, in proportion to their state tax at the time when the expense may have been incurred, or in such proportion as the places interested shall agree.

Remedy against places neglecting to pay.  
R. S. 16, § 14.  
1852, 312.

SECT. 13. If a place refuses or neglects to advance or reimburse its proportion of the sums of money mentioned in the preceding section, or of any other charges mentioned in this chapter, after the same have been adjusted by the joint board of directors, the same may be recovered of such delinquent place in an action of contract brought by any person whom the board shall in writing appoint for that purpose.

Towns not to send more than their proportion,  
R. S. 16, § 15.

SECT. 14. No greater number of persons belonging to a city or town shall be received into such workhouse or almshouse, than such city's or town's proportion of such house, when the receiving of them would exclude or be inconvenient to such as belong to the other places interested.

Any place refusing to contribute to expenses, shall not use house.  
R. S. 16, § 16.

SECT. 15. If any place refuses or neglects to provide its proportion of the necessary expenses of such house, or of the materials, implements, or other means, for performing the work there required, according to its agreement or the directions of the joint board of directors, such place shall be deprived of the privilege of sending any person thither during the time of such neglect or refusal.

Each place may furnish materials, &c., for persons committed by its authority.  
R. S. 16, § 17.

SECT. 16. Each place may furnish such additional materials, implements, and means of work, as the overseers of the poor thereof may choose, for the employment of any person committed to such house; and the master of the house shall receive the same, and keep them separate from those of the other places, and shall be accountable to each place interested, as well for the cost as for all profits and earnings made by the labor of the persons committed to said house from such place.

Masters to keep register of persons committed, &c.  
R. S. 16, § 18.

SECT. 17. The master of each workhouse and almshouse shall keep a register of the names of the persons committed or received, the places to which they belong, the dates of their reception and discharge, and of their respective earnings, to be submitted to the overseers of the poor upon their request.

Controversies between master and overseers, how determined.  
R. S. 16, § 19.

SECT. 18. Controversies between the masters and the overseers of the poor of any place respecting the accounts or other official doings of the masters, shall be determined by the directors of the house at their general or quarterly meeting.

Profits and earnings, how appropriated.  
R. S. 16, § 23.

SECT. 19. The profits and earnings arising from the work of persons committed to the workhouse or almshouse, with the stock remaining on hand, shall be disposed of as the overseers of the poor of the several places shall think proper, either to the use of their cities or towns, the persons committed, or their families.

How persons may be discharged.  
R. S. 16, § 20.  
1859, 196.

SECT. 20. No person committed to the workhouse shall be discharged within the time for which he was committed, except by the police court or justice who made the commitment, the directors of the house at their general or quarterly meeting, or by the superior court, at any term held in the county where such house is situated, for good cause shown upon application for that purpose.

Persons committed to be kept employed. Discipline.  
R. S. 16, § 21.

SECT. 21. Every person committed to a workhouse shall if able to work be kept diligently employed in labor during the term of his commitment. If he is idle and does not perform such reasonable task as is assigned, or is stubborn and disorderly, he shall be punished according to the orders and regulations established by the directors.

Provisions respecting foreigners committed.  
R. S. 16, § 22.  
1852, 275.

SECT. 22. When a person not having a legal settlement in this state shall become idle or indigent, he may be committed to the workhouse to be there employed, if able to labor, in the same manner and under the same rules as other persons there committed.

SECT. 23. A workhouse or almshouse may be discontinued or appropriated to any other use, when the place or places interested so determine.

Workhouses may be discontinued.  
R. S. 16, § 24.

SECT. 24. Nothing contained in this chapter shall affect any powers or privileges heretofore granted to cities or towns, or the overseers of the poor thereof, by acts specially relating to workhouses or almshouses therein.

Construction of this chapter.  
R. S. 16, § 25.

## CHAPTER 23.

### OF WATCH AND WARD.

#### SECTION

1. Watch, cities, &c., may establish.
2. duties and powers of.
3. badges and weapons of.
4. Selectmen, &c., may order watch, &c., where none is established.
5. Persons liable to watch, &c.
6. Persons exempt.
7. Penalty on persons liable, &c., refusing, &c.
8. Watch districts may be established in villages.
9. Selectmen, &c., to notify meeting, upon application in writing, &c.
10. Proceedings when village is situated in two or more towns.

#### SECTION

11. Clerk.
12. Prudential committee.
13. Annual meetings for choice of officers.
14. Meetings, how called, &c.
15. Districts may raise money, which shall be under charge of prudential committee, &c.
16. Clerk shall certify to assessors amount to be raised.
17. Duty of assessors, when district is situated in two or more towns.
18. Territory adjoining a district, how annexed.
19. Watch districts heretofore organized.

SECTION 1. A city or town may establish and keep a watch and determine the number and qualifications of the persons to be employed for that purpose. The mayor and aldermen or selectmen shall appoint a suitable person to be officer of the watch, and direct the manner in which watchmen shall be equipped. The expense of the watch shall be defrayed in like manner as other town charges.

Watch, cities, &c., may establish;  
R. S. 17, §§ 7, 8.

SECT. 2. The watch shall see that all disturbances and disorders are prevented and suppressed. During the night time they may examine all persons abroad whom they have reason to suspect of any unlawful design, demand of them their business abroad and whither they are going; may disperse any assembly of three or more such persons, and enter any building for the purpose of suppressing a riot or breach of the peace therein. Persons so suspected and not giving a satisfactory account of themselves, persons so assembled and not dispersing when ordered, and persons making, aiding, or abetting in a riot or disturbance, may be arrested by the watch, and shall thereupon be safely kept, by imprisonment or otherwise, until the next morning, and then taken before a police court or some trial justice, to be examined and proceeded against.

duties and powers of;  
R. S. 17, § 4.  
1860, 186.

SECT. 3. Officers and members of the watch, when on duty, may carry a club of not more than eighteen inches in length; shall wear such badge of office as the mayor or selectmen direct, and shall walk the rounds in and about the streets, lanes, wharves, and principal inhabited parts of the city or town, to prevent danger by fire, and to see that good order is kept.

badges and weapons of;  
R. S. 17, §§ 5, 6.  
1865, 118.  
See 1864, 110.  
1871, 331, § 8.

SECT. 4. The mayor and aldermen or selectmen of any place wherein no watch as above provided is established, may, from time to time, order a suitable watch to be kept in their place, and warn all persons liable to watch and ward duty to perform the same. They may direct the number of the watch, the places and hours for keeping the same, may order in writing any constable or officer of the watch to warn such

Selectmen, &c., may order watch, &c., where none is established.  
R. S. 17, §§ 8, 9.

Persons liable to watch, &c.  
R. S. 17, 1.

Persons exempt.  
R. S. 17, § 2.

Penalty on persons liable, &c., refusing, &c.  
R. S. 17, §§ 9, 10.  
1839, 185.  
1852, 312.

watch, either by himself or by some person therefor by him appointed, and to see that all persons so warned attend and perform their duty.

SECT. 5. Every male person of the age of eighteen years or upwards, being able of body, or having sufficient estate to hire a substitute, and not exempt, shall be liable to watch and ward in his city or town, and shall perform the duties, be subject to the liabilities, and have the powers of watchmen as the same are defined in this chapter.

SECT. 6. Justices of the peace, mayors, aldermen, selectmen, sheriffs, settled ministers of the gospel, and persons living more than two miles from the place where such watch and ward is kept, shall be exempt.

SECT. 7. Persons liable to watch and ward, and without reasonable excuse neglecting or refusing to appear and do duty personally or by sufficient substitute, and constables or officers or members of the watch refusing to execute and observe proper orders, shall forfeit ten dollars, to be recovered by complaint to the use of the commonwealth, or by action of tort to the use of the city or town.

#### WATCH IN VILLAGES AND DISTRICTS.

Watch districts may be established in villages.  
1855, 274, §§ 1, 5.

Selectmen, &c., to notify meeting, upon application in writing, &c.  
1855, 274, § 2.

Proceedings when village is situated in two or more towns.  
1855, 274, § 3.

Clerk.  
1855, 274, §§ 4, 5.

Prudential committee.  
1855, 274, §§ 5, 6.  
Annual meetings for choice of officers.  
1855, 274, § 9.

Meetings, how called, &c.  
1855, 274, §§ 2, 3, 7.

SECT. 8. Watch districts may be established and organized in villages containing not less than one thousand persons, for the protection of property against fire, thieves, and robbers, and for keeping the streets quiet in the night time.

SECT. 9. The selectmen of a town, upon the application in writing of not less than seven freeholders, inhabitants of such village the limits of which shall be defined in the application, requiring them to notify a meeting of the persons in such district qualified to vote in town affairs, for considering the expediency of establishing such watch district, shall forthwith give notice to such voters, in the manner in which notice of town meetings is given, to assemble at some suitable place within the district for said purpose, the substance of which shall be expressed in the notification. If the selectmen refuse or neglect to give notice of such meeting, any justice of the peace in the county may so notify the same.

SECT. 10. When such village belongs to two or more towns, the voters thereof may organize such district at a meeting called and notified as provided in the preceding section by any justice of the peace for the county in which either town is situated, to whom application has been made by at least five voters of each town who are inhabitants of such district.

SECT. 11. If at any such meeting the voters present determine to establish such district, a clerk shall be chosen, who shall be sworn to keep a true record of the proceedings of all meetings and to perform all duties of clerk of the district so long as he holds the office. He may be removed by the district, or may resign, and in case of a vacancy another may be chosen.

SECT. 12. A prudential committee of not less than three nor more than five persons shall be chosen by ballot, and shall be sworn.

SECT. 13. The prudential committee shall annually issue their warrants to the clerk, requiring him to call a meeting in the month of March for the purpose of choosing officers. Such officers shall perform the duties of their offices until others are chosen.

SECT. 14. Meetings of the district shall be called by the clerk when requested in writing by the prudential committee or seven voters of the district. He shall give notice thereof by posting written notifications in at least six public places in the district, not less than seven days prior to the meeting, which notifications shall contain a brief statement of the purposes of the meeting. At each of the meetings a moderator shall be chosen, who shall have the powers of the moderator of a town

meeting. After the choice of a clerk he shall preside at subsequent meetings with like powers until a moderator is chosen.

SECT. 15. The district may, at meetings called for the purpose, vote to raise money for the payment of watchmen and other necessary expenses. The prudential committee shall have the superintendence and control of the watchmen, have charge of and be responsible for the property employed, have the custody and management of the money raised, expend the same for the purposes specified in the votes of the district, be accountable to the district for the money received by them, and be liable to a suit for such money or other property of the district, in the name of the inhabitants thereof.

Districts may raise money, which shall be under charge of prudential committee, &c.  
1855, 274, §§ 1, 8.

SECT. 16. The clerk shall certify to the assessors of the town all sums of money voted to be raised, which shall be assessed and collected, by the officers of the town in the same manner that the town taxes are assessed and collected, and be paid over to the treasurer, who shall hold the same subject to the order of the prudential committee. The assessors, treasurer, and collector, of any town in which such district is organized shall have the powers and perform the duties, in reference to the assessment and collection of said taxes, which they have and perform in the assessment, collection, and abatement, of town taxes: but the sum so voted shall be assessed upon the property real and personal located within such district.

Clerk shall certify to assessors amount to be raised.  
1855, 274, § 10.  
11 Met. 374.

SECT. 17. When a district is composed of parts of two or more towns, the assessors of such towns shall transmit to the clerk of the district the amount of taxable property in such part of their respective towns as is within the limits of the district; the prudential committee shall thereupon apportion the money voted to be raised by the district among the respective towns according to the returns thus transmitted, and the same shall be collected and held in the manner provided in the preceding section.

Duty of assessors, when district is situated in two or more towns.  
1855, 274, § 11.

SECT. 18. When the freeholders of a territory adjoining a watch district present to the clerk thereof a petition describing their territory and requesting to be annexed to such district, the clerk shall give notice of the petition at the next annual meeting of the district, when by a vote of the meeting the inhabitants of such territory may be annexed to the district.

Territory adjoining a district, how annexed.  
1855, 274, § 12.

SECT. 19. Watch districts heretofore legally organized shall continue, and be subject to the provisions of this chapter in relation to watch districts.

Watch districts heretofore organized.

## CHAPTER 24.

### OF FIRES AND FIRE DEPARTMENTS.

#### EXTINGUISHMENT OF FIRES.

##### SECTION

1. Firewards to be chosen, &c.
2. Penalty for not accepting or refusing.
3. Firewards shall attend at fires.
4. selectmen, &c., may order buildings to be pulled down, &c.
5. Owners of buildings, &c., pulled down, to be indemnified, except, &c.
6. Firewards may command assistance.
7. may give orders to enginemen and others, &c.
8. Embezzling, &c., of property at a fire to be deemed larceny.

##### ENGINEMEN.

9. Selectmen, &c., to appoint enginemen.

##### SECTION

10. Number of enginemen to each engine.
11. Axe-men, &c., to be appointed.
12. Annual meeting of enginemen in May. Rules may be made and penalties annexed.
13. Meetings of engine companies.
14. Selectmen, &c., to appoint enginemen to private engines.
15. If selectmen, &c., refuse, commissioners may appoint.
16. Enginemen to live near engines.
17. If negligent, may be discharged.
18. compensation of.
19. Chief engineer, &c., to certify to assessors. Assessors shall examine and certify lists. Treasurers shall pay. Remedy.

## SECTION

20. Penalty for refusing certificate, &c., or making false one.  
 21. Three preceding sections not to apply unless adopted.  
 22. Penalty for injuring fire engines.

## FIRE DEPARTMENTS.

23. Fire departments may be organised, &c.  
 24. Engineers, selectmen to appoint, &c.  
 25. Organisation of.  
 26. to have powers of firewards; to appoint enginemen, &c.  
 27. Organisation of enginemen, &c., their by-laws, &c.  
 28. Privileges and duties of engineers, &c.  
 29. Engineers to have care of engines, and other fire apparatus.  
 30. may make rules, as to carrying fire, lighted matches, &c., in streets, &c.  
 31. Other general powers, as to preventing, &c., fires.  
 32. Future acts establishing fire departments, &c.

## FIRE DISTRICTS.

33. Fire departments in villages and districts.  
 34. proceedings before establishment of.  
 35. Selectmen, or justice of the peace, may call meeting of district, upon request of seven freeholders.

## SECTION

36. Who to vote at such meetings; clerk to be chosen; his duties.  
 37. At such meeting, fire department may be established.  
 38. Engineer, &c., how chosen.  
 39. Meetings of fire district, how called and conducted.  
 40. Board of engineers to make rules and regulations, appoint enginemen, &c.  
 41. Power of engineers, and liability of district for their acts.  
 42. Privileges, &c.; compensation.  
 43. Money may be raised, to be under charge of prudential committee, to be chosen, &c.  
 44. Assessment and collection of money voted to be raised by fire district.  
 45. By-laws, imposing penalties, to be approved by superior court.  
 46. Penalties, how recovered, &c.  
 47. District may exclude, &c., particular persons or estates.  
 48. Districts heretofore organized.

## SPECIAL PROVISIONS.

49. Fire clubs not to be established, unless, &c.  
 50. Penalty for joining without permission.  
 51. Two preceding sections to be in force only, &c.

[Street lamps 1864, 159; 1868, 92; 1870, 28, 305, 322.]

## EXTINGUISHMENT OF FIRES.

SECTION 1. (R.) [The inhabitants of each town at their annual meeting, and the city council of each city, may elect such number of suitable persons to be firewards therein as they deem necessary.]

SECT. 2. (R.) [Each person elected shall forthwith have notice thereof, and within three days after such notice shall enter his acceptance or refusal of the office with the town clerk; whoever after such notice neglects so to enter his acceptance or refusal shall, unless excused by the city or town, forfeit ten dollars, and another may be elected in his place.]

SECT. 3. When a fire breaks out in any place, the firewards shall immediately repair thereto, and shall carry a suitable staff or badge of their office.

SECT. 4. The firewards or any three of them present at a place in immediate danger from a fire and where no firewards are appointed, the selectmen or mayor and aldermen present, or in their absence two or more of the civil officers present, or in their absence two or more of the chief military officers of the place present, may direct any house or building to be pulled down or demolished when they judge the same to be necessary in order to prevent the spreading of the fire.

SECT. 5. If such pulling down or demolishing of a house or building is the means of stopping the fire, or if the fire stops before it comes to the same, the owner shall be entitled to recover a reasonable compensation from the city or town; but when such building is that in which the fire first broke out, the owner shall receive no compensation.

SECT. 6. Such firewards or other officers may during the continuance of a fire require assistance for extinguishing the same and removing furniture, goods, or merchandise, from a building on fire or in danger thereof; and may appoint guards to secure the same. They may also require assistance for pulling down or demolishing any house or building when they judge it necessary; and may suppress all tumults and disorders at such fire.

SECT. 7. They may direct the stations and operations of the enginemen with their engines, and of all other persons for the purpose of

*Constructing engines*  
 1874 - 371

*Firewards, to be chosen, &c.*  
 R. S. 18, § 1.  
 (R.) Repeal and substitute.  
 1871, 21.  
 Penalty for not accepting or refusing.  
 R. S. 18, § 2.  
 (R.) Repeal and substitute.  
 1871, 21.

Firewards shall attend at fires;  
 R. S. 18, § 3.  
 5 Cush. 269.

selectmen, &c., may order buildings to be pulled down, &c.  
 R. S. 18, § 4.  
 104 Mass. 94.

Owners to be indemnified, except, &c.  
 R. S. 18, § 7.  
 8 Met. 462.  
 5 Cush. 269.  
 11 Cush. 433.  
 11 Allen, 507.  
 Firewards may command assistance;  
 R. S. 18, § 5.

may give orders to enginemen and others, &c.  
 R. S. 18, § 6.

*Fire in roads.*  
 1874, 228

extinguishing the fire; and whoever refuses or neglects to obey such orders shall forfeit for each offence a sum not exceeding ten dollars.

SECT. 8. Whoever purloins, embezzles, conveys away, or conceals, any furniture, goods or chattels, merchandise or effects, of persons whose houses or buildings are on fire or endangered thereby, and does not within two days restore or give notice thereof to the owner if known, or if unknown, to one of the firewards, mayor and aldermen, or selectmen, of the place, shall be deemed guilty of larceny.

Embezzling, &c., of property, at a fire, to be deemed larceny.  
R. S. 18, § 8.

#### ENGINEMEN.

SECT. 9. The mayor and aldermen or selectmen of places provided with fire engines may appoint suitable persons for engine-men; who shall continue in office during the pleasure of the authority appointing them.

Selectmen, &c., to appoint engine-men.  
R. S. 18, § 9.  
104 Mass. 94.  
111 m. 60

SECT. 10. Such engines shall be manned as follows: each common engine, or suction engine when used as a common engine only, with not exceeding thirty men; each suction engine, when used as such, with not exceeding forty-five men: but this provision shall not affect the present right of any place to have a greater number of engine-men appointed than is herein prescribed.

Number of engine-men to each engine.  
R. S. 18, § 10.

SECT. 11. The mayor and aldermen or selectmen may select from the engine-men any number for each engine, who shall under the direction of the firewards attend fires with axes, fire-hooks, fire-sails, and ladders, and do such further duty as the mayor and aldermen or selectmen shall from time to time prescribe; and they shall be entitled to all exemptions and privileges of other engine-men.

Axe-men, &c., to be appointed.  
R. S. 18, § 11.

SECT. 12. Each company of engine-men so appointed shall meet annually in May and choose a foreman, or director, and a clerk, and establish such rules and regulations not repugnant to the laws of the commonwealth respecting their duty as engine-men, as shall be approved by the mayor and aldermen or selectmen; and they shall annex penalties thereto not exceeding ten dollars, which may be recovered by the clerk in an action of tort.

Annual meeting of engine-men in May.  
Rules may be made and penalties annexed.  
R. S. 18, § 12.

SECT. 13. Such companies shall meet together once a month, and oftener if necessary, for the purpose of examining the engine and its appendages and seeing that they are in good repair and ready for use. They shall by night and day, under the direction of the firewards, use their best endeavors to extinguish any fire that may happen in their city or town or the vicinity thereof.

Meetings of engine companies.  
R. S. 18, § 13.  
104 Mass. 94.

SECT. 14. When the proprietors of an engine apply to the mayor and aldermen or selectmen of a city or town in which the engine is owned, setting forth that they desire that the same should be employed for the benefit of such place, the mayor and aldermen or selectmen may appoint engine-men in the same manner, with the same privileges, and subject to the same regulations, as if the engine belonged to the place; and if the proprietors do not agree as to where the engine shall be kept, the mayor and aldermen or selectmen shall determine the same.

Selectmen, &c., to appoint engine-men to private engines.  
R. S. 18, § 14.

SECT. 15. If the mayor and aldermen or selectmen upon such application refuse or delay for the space of fourteen days so to appoint engine-men, the proprietors may apply therefor in writing to the county commissioners, giving notice in writing to such mayor and aldermen or selectmen seven days at least before the sitting of the commissioners, that they may appear and show cause, if any they have, why such engine-men should not be appointed; and if sufficient cause is not shown by them the commissioners may appoint the number of engine-men prescribed in section ten.

If selectmen, &c., refuse, commissioners may appoint.  
R. S. 18, § 15.

SECT. 16. Engine-men appointed under the two preceding sections shall, if such can be obtained, be persons living at or near the place

Engine-men to live near engines.  
R. S. 18, § 16.

where the engine is kept, and they shall enjoy all the privileges and exemptions of other enginemen.

SECT. 17. If an engineman is negligent in his duties the mayor and aldermen or selectmen shall discharge him and appoint another in his stead.

SECT. 18. Persons appointed enginemen or members of the fire department in any place, and who have done duty as such for one year preceding the first day of May in any year, shall be entitled to receive from the treasurers of their respective towns a sum equal to the poll-tax for state, county, and town taxes, (exclusive of highway taxes,) paid by them, or by their parents, masters, or guardians, and such further compensation as the town determines.

SECT. 19. The chief engineer or the officer who holds the first office in any fire department, and the foreman or director of each company in any place where no fire department is established by law, shall annually on or before the first day of May make out and certify to the assessors of their respective places a list of all persons in their department or companies who through the year preceding have performed all the duties therein required by law. The assessors shall within ten days thereafter examine such lists and certify to the treasurers of their respective places the amount to be paid to each person named therein. Such treasurers shall after deducting all taxes due from the persons so named pay the same to them, or if minors to their parents, masters, or guardians; and upon refusal of the treasurer to pay any sums so certified and returned, the persons entitled may severally recover the same from such places in an action of contract.

SECT. 20. If such chief engineer or other officer wilfully refuses to make such certificate, he shall forfeit for each person whose name ought to have been so certified, a sum not exceeding five dollars, to be recovered in an action of tort to his use, or on complaint to the use of the commonwealth; and if such engineer or other officer makes a false certificate in such case, he shall forfeit a sum not exceeding fifty nor less than twenty dollars, to be recovered in an action of tort to the use of the city or town, or on complaint to the use of the commonwealth.

SECT. 21. The provisions of the three preceding sections shall be in force only in those cities and towns which have adopted or may adopt the same at the annual meeting of the town or by the city council of the city. When such adoption shall be revoked by the town at an annual meeting, or by the city council of a city, said provisions shall cease to be in force therein.

SECT. 22. Whoever wantonly or maliciously injures a fire engine or the apparatus belonging thereto, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, and be further ordered to recognize with sufficient surety or sureties for his good behavior during such term as the court shall order.

#### FIRE DEPARTMENTS.

SECT. 23. The selectmen of any town may establish a fire department therein in the manner hereinafter provided, and such department and every other fire department, unless different provisions are specially made therefor, shall be organized in the manner, and the members thereof may exercise the powers and shall be subject to the liabilities, hereinafter mentioned.

SECT. 24. The selectmen of such town shall annually in April appoint for such department as many engineers not exceeding twelve as they may think expedient, for the term of one year from the first day of May following and until others are appointed in their stead; and the selectmen shall fill all vacancies.

Enginemen, if negligent, may be discharged.  
R. S. 18, § 18.

1119a. 60  
of.  
R. S. 18, § 19  
1838, 71, § 2  
See § 21.

Chief engineer, &c., to certify to assessors. Assessors shall examine and certify lists. Treasurers shall pay.  
Remedy.  
R. S. 19, § 20.  
1862, 312.  
See § 21.

Penalty for refusing certificate, &c., or making false one.  
R. S. 18, § 21.  
1899, 186.  
1862, 312.  
See § 21.

Three preceding sections not to apply unless adopted.  
R. S. 18, § 22.

Penalty for injuring fire engines.  
R. S. 18, § 23.

Fire departments may be organized, &c.  
1838, 138, § 1.  
1866, 128.  
101 Mass. 117.

Engineers, selectmen to appoint, &c.  
1899, 186, § 2.



SECT. 25. They shall immediately after such appointment issue a notice to each of said engineers to meet at a time and place designated in the notice; at which meeting the engineers shall choose a chief engineer, a clerk, and such other officers as they may deem necessary for their complete organization.

Engineers, or organization of; 1839, 138, § 3.

SECT. 26. The engineers in relation to the extinguishment of fires shall exercise the powers which firewards may by law have and exercise, and in relation to the nomination and appointment of enginemen shall exercise the powers and perform the duties of selectmen. They may appoint such number of men to the engines, hose, hook, ladder, and sail carriages, and to constitute fire companies for securing property endangered by fire, as they may think expedient; but the number of men appointed shall not exceed to each suction fire engine, fifty; to each common engine, thirty-five; to each hose-carriage, five; to each hook and ladder and sail carriage, twenty-five; and to each fire company, twenty-five.

to have powers of firewards; to appoint enginemen, &c. 1839, 138, § 4. 104 Mass. 94.

111 m. 60

SECT. 27. The engine, hose, hook and ladder, and sail carriage men, and fire companies, may organize themselves into distinct companies, elect the necessary officers, and establish such rules, regulations, and by-laws, as may be approved by the board of engineers; and may annex penalties to the breach of the same, not exceeding ten dollars in any case; and the same may be recovered by the clerk in an action of tort to the use of the company.

Organization of enginemen, &c., their by-laws, &c. 1839, 138, § 5. 1862, 312.

SECT. 28. The engineers and all persons appointed by them shall be subject to the same duties and liabilities and entitled to the same privileges and exemptions as enginemen appointed by selectmen.

Privileges and duties of engineers, &c. 1839, 138, § 6.

SECT. 29. The board of engineers shall have the care and superintendence of the public engines, hose, fire-hooks, ladder-carriages, and ladders, in their respective towns, together with the buildings, fixtures, and appendages, belonging thereto, and all pumps, reservoirs for water, and apparatus, owned by the town and used for extinguishing fires; and shall cause the same to be kept in repair, and when worn out to be replaced; and, from time to time, shall make such alterations therein and additions thereto as they shall deem necessary; but such alterations, additions, or repairs, shall not in any one year exceed the sum of one hundred dollars, unless the town has authorized a larger appropriation.

Engineers to have care of engines, and other fire apparatus; 1839, 138, § 7. 104 Mass. 94.

SECT. 30. They may at any meeting establish such rules and regulations as they judge proper to prohibit or regulate the carrying of fire, firebrands, lighted matches, or other ignited materials, openly in the streets or thoroughfares of such town, or such parts thereof as they may designate, or to prohibit owners or occupants of buildings within their town, or such part thereof as they may designate, from erecting or maintaining any defective chimney, hearth, oven, stove, or stove-pipe, fire-frame, or other fixture, deposit of ashes, or any mixture or other material which may produce spontaneous combustion, or whatever else may give just cause of alarm or be the means of kindling or spreading fire.

may make rules as to carrying fire, lighted matches, &c., in streets, &c. 1839, 138, § 8.

SECT. 31. They may make and ordain rules and regulations not repugnant to the constitution and laws of the state, for their own government and the conduct of citizens at fires, and annex penalties for the breach thereof not exceeding twenty dollars for one offence; which may be recovered by the chief engineer in an action of tort and appropriated by the engineers to the improvement of the fire apparatus of the town: but such rules and regulations shall not be binding until approved by the inhabitants of the town at a meeting held for the purpose, and published as the town shall direct.

Other general powers, as to preventing, &c., fires. 1839, 138, § 8. 1862, 312.

SECT. 32. No act hereafter passed establishing a fire department, in any town, shall take effect until it is accepted and approved by the inhabitants of such town at a meeting held for the purpose.

Future acts establishing fire departments, &c. 1839, 138, § 9.

## FIRE DISTRICTS.

Fire departments, in villages and districts :  
1844, 152, § 1.

proceedings to establish.  
1844, 152, § 2.

Selectmen, &c., to call meeting upon request of seven freeholders.  
1844, 152, § 3.  
See 1870, 332, § 2.

Who to vote at such meetings ; clerk to be chosen, his duties.  
1844, 152, § 4.  
See 1865, 257.  
1870, 332, § 2.  
1871, 124.

At such meeting fire department may be established.  
1844, 152, § 5.

## Certificates.

Engineers, how chosen.  
1844, 152, § 6.  
(Annually.  
1871, 25.)  
Meetings of fire district, how called and conducted.  
1844, 152, § 7.  
See 1866, 257.  
1870, 332, § 2.

Board of engineers to make rules, &c  
1844, 152, §§ 8, 11  
See § 48.  
104 Mass. 94.

SECT. 33. Fire departments may be established in villages or districts containing not less than one thousand inhabitants, the officers of which shall have charge of and be responsible for the engines and other apparatus for the extinguishment of fire therein, in the same manner as firewards and enginemmen of towns.

SECT. 34. Before a district is constituted and organized, a petition shall be presented to the town at a legal meeting, stating the limits of the proposed district and requesting the town to raise taxes for the establishment and maintenance of a sufficient fire department for the reasonable protection from fire of the inhabitants and property within said limits. If the town refuses or neglects so to do, the inhabitants of the proposed district may proceed to constitute and organize the same and to establish a fire department therein as hereinafter provided.

SECT. 35. The selectmen upon the application in writing of not less than seven freeholders, inhabitants of such proposed district, setting forth the limits thereof, and requiring them to notify a meeting of the inhabitants thereof duly qualified to vote in town affairs, for the purpose of considering the expediency of organizing such district and establishing a fire department, shall forthwith give notice to such inhabitants, in the manner of notifying town meetings, to assemble at some suitable place within the district for said purpose, the substance of which shall be expressed in the notification. If the selectmen refuse or neglect to notify such meeting, any justice of the peace in the county may notify the same.

SECT. 36. If at any such meeting the voters present determine to organize such district, they shall choose a clerk, who shall be sworn to keep a true record of the proceedings of all meetings and to perform all the duties of clerk so long as he holds the office. He may be removed by the district, or may resign, and in case of a vacancy another may be chosen.

SECT. 37. The district at such meeting may vote to establish a fire department to consist of a chief engineer, and as many assistant-engineers, enginemmen, hosemen, and hook and ladder men, as they may deem necessary, not exceeding for each suction engine, seventy-five, for each common engine, thirty-five, for each one hundred and fifty feet of leading hose kept for use within the district, five and not exceeding twenty-five hook and ladder men ; each of said officers and members shall be furnished with a certificate under the hands of the chief engineer and clerk, declaring his station in the department.

SECT. 38. The chief engineer and assistant-engineers shall be chosen by the district and shall be sworn.

SECT. 39. Meetings of the district shall be called by the clerk when requested in writing by the chief engineer, or two assistant-engineers, or seven voters of the district ; and he shall give notice of the same by posting written notifications in at least six public places in the district not less than seven days prior to the meeting, or by publishing the same in a newspaper, if one is printed in the town where the district is situated, which notifications shall briefly state the purposes of the meeting. At each of the meetings a moderator shall be chosen, who shall have the powers of the moderator of a town meeting. After the choice of a clerk, he shall preside at subsequent meetings with like powers until a moderator is chosen.

SECT. 40. The board of engineers may from time to time make and publish rules and regulations for their own government, and that of other members of the department, and of persons present at fires, and for regulating or prohibiting the carrying of fire or ignited substances in or through the streets or ways of the district, and prescribe penalties

for the violation thereof, not exceeding twenty dollars for each offence. The board may appoint enginemen, hosemen, hook and ladder men, remove them, and fill vacancies in the companies.

SECT. 41. Engineers shall have and exercise the same powers and authority relative to the extinguishment of fires, and the demolishing of buildings for that purpose within the district, as firewards of towns; and the inhabitants of districts shall be liable for acts done by such engineers, or by their orders, in the same manner as towns are liable for acts done by firewards.

SECT. 42. Engineers and other members of the fire department of such district shall have the immunities and privileges of firewards and enginemen of towns, and shall receive such compensation as the district determines.

SECT. 43. Such districts may, at meetings called for the purpose, raise money for the purchase of engines and other articles necessary for the extinguishment of fires, for the purchase of land and erection and repairs of necessary buildings, and other incidental expenses of the fire department. They shall choose a prudential committee, who shall have the care, custody, and management, of the money so raised, and shall expend the same for the purposes prescribed by votes of the district; and such committee shall be accountable to the district for such money received by them, which may maintain a suit therefor in the name of the inhabitants thereof.

SECT. 44. The clerk shall certify to the assessors of the town all sums of money voted to be raised by the district, which shall be assessed and collected by the officers of the town in the same manner that the town taxes are assessed and collected, and be paid over to the treasurer, who shall hold the same subject to the order of the prudential committee. The assessors, treasurer, and collector, of any town in which such district is organized shall have the powers and perform the duties in reference to the assessment and collection of the money voted by the fire district, as they have and exercise in reference to the assessment, collection, and abatement, of town taxes, but the sums so voted shall be assessed upon the property real and personal within the district.

SECT. 45. No by-law, rule, or regulation, adopted by the district, and having a penalty attached to it, shall be in force until it is approved by the superior court for the county in which such fire district is.

SECT. 46. Penalties under the provisions of the twelve preceding sections may be recovered by action of tort in the name of the chief engineer and appropriated to pay the expenses of the fire department of the district, or on complaint or indictment to the use of the commonwealth. If the chief engineer shall die, resign, or remove, during the pendency of such suit, it shall not abate, but his successor shall be admitted to prosecute it. No inhabitant of the district shall be disqualified to act as judge, magistrate, juror, or officer, in a suit brought for such penalties.

SECT. 47. Such district, at a meeting called for that purpose, may alter the limits thereof so as to include any adjacent territory and its inhabitants, if the voters of said territory have petitioned therefor, setting forth the limits of the territory to be annexed; or exclude any person, or the estate of any person, who has thus petitioned, if the town within which the district is situated has assented thereto.

SECT. 48. Fire districts heretofore legally organized shall continue and be subject to the provisions of this chapter in relation to fire districts.

Engineers to appoint enginemen

power of, and liability of district for their acts.  
1844, 152, § 9.  
1844, 159.  
104 Mass. 94.

Privileges, &c. Compensation.  
1844, 152, §§ 10, 14.

Money raised to be under charge of prudential committee, to be chosen, &c.  
1844, 152, § 12.  
1870, 332.  
104 Mass. 94.

*Repealed*  
1874, 151

Assessment and collection of money voted to be raised by fire district.  
1844, 152, § 13.  
11 Met. 374.  
1870, 332.

1874, 151 & 1876, 114

By-laws, imposing penalties, to be approved.  
1844, 152, § 15.  
1859, 196.

Penalties, how recovered, &c.  
1839, 135.  
1844, 152, §§ 8, 15.  
1852, 312.  
1870, 332.

Suit not to abate, &c.

District may exclude, &c., particular persons, or estates.  
1845, 237, § 1.  
1870, 332.

1875, 122

Districts heretofore organized.

SPECIAL PROVISIONS.

SECT. 49. No association, society, or club, organized as firemen, shall

Fire clubs not to be established,

unless, &c.  
1855, 161, § 1.

Penalty for joining without permission.  
1855, 161, § 2.

Two preceding sections to be in force only where, &c.  
1855, 161, § 3.

be allowed in any city or town except by the written permission of the mayor and aldermen or selectmen.

SECT. 50. Whoever joins, belongs to, or assembles with, such association, society, or club, existing without such permission, shall be punished by fine not less than five nor more than one hundred dollars, or by imprisonment in the house of correction for a term not exceeding three months.

SECT. 51. The provisions of the two preceding sections shall be in force in those cities and towns only which have adopted or may adopt the same.

## CHAPTER 25.

### OF FENCES AND FENCE VIEWERS, POUNDS, AND FIELD DRIVERS.

FENCES.	POUNDS, AND IMPOUNDING OF CATTLE; FIELD DRIVERS.
SECTION	SECTION
<ol style="list-style-type: none"> <li>1. What shall be a legal fence.</li> <li>2. Adjoining occupants to maintain fences.</li> <li>3. Proceedings when a party neglects, &amp;c.</li> <li>4. Remedy against adjoining owner, &amp;c., for repairing, &amp;c., deficient fence.</li> <li>5. Controversies between parties about repairing, &amp;c., how determined.</li> <li>6. Double damages in case, &amp;c.</li> <li>7. Fence viewers may order compensation for repairing more than just share.</li> <li>8. Partition fences, how kept.</li> <li>9. how and where made when lands are bounded by water.</li> <li>10. Where lands have been improved without partition fences, division may be made.</li> <li>11. Fences to be maintained by agreement of parties or assignment of fence viewers. Lands may be laid common by giving notice.</li> <li>12. When one party lays open enclosed lands, the other may purchase right in fence.</li> <li>13. Where unimproved lands are afterwards enclosed, &amp;c., party benefited shall pay, &amp;c.</li> <li>14. Fence viewers, when fences are on town lines.</li> <li>15. Where water fence is necessary, how made.</li> <li>16. Penalty for fence viewer's neglect of duty.</li> <li>17. Fees of fence viewers, how recovered.</li> </ol>	<ol style="list-style-type: none"> <li>18 Pounds to be provided by towns. Penalty for neglect.</li> <li>19. Penalty for injuring pounds.</li> <li>20. Pound keeper to be appointed.</li> <li>21. Field drivers to take up beasts going at large without keeper. Beasts going at large on Lord's day, &amp;c.</li> <li>22. Beasts taken up to be impounded.</li> <li>23. Fees to field driver and pound keeper.</li> <li>24. to be paid by owner of beasts.</li> <li>25. Beasts doing damage, may be distrained.</li> <li>26. to be impounded.</li> <li>27. Person distraining to state demand.</li> <li>28. Beasts not to be delivered until costs, &amp;c., are paid.</li> <li>29. Notice to be given to owner or keeper.</li> <li>30. or posted up and published in a newspaper, in case, &amp;c.</li> <li>31, 32. Sum due from owner, how determined.</li> <li>33. if not paid, beasts to be sold.</li> <li>34. proceeds, how disposed of.</li> <li>35. Beasts escaped or rescued, may be retaken.</li> <li>36. Penalty for rescuing beasts distrained.</li> <li>37. Legality of distress to be tried only by replevin.</li> <li>38. Rams and he goats, when not to go at large.</li> </ol>

### FENCES.

[See 1833, 190; 1870, 376.]

What shall be a legal fence.  
R. S. 19, § 1.  
96 Mass. 560.

SECTION 1. Fences four feet high and in good repair, consisting of rails, timber, boards, or stone, and brooks, rivers, ponds, creeks, ditches, and hedges, or other things which the fence viewers within whose jurisdiction the same shall lie shall consider equivalent thereto, shall be deemed legal and sufficient fences.

SECT. 2. The respective occupants of lands enclosed with fences, shall so long as both parties improve the same keep up and maintain partition fences between their own and the next adjoining enclosures, in equal shares.

SECT. 3. If a party refuses or neglects to repair or rebuild a partition fence which he ought to maintain, the aggrieved party may complain to two or more fence viewers of the place, who after due notice to each party shall survey the same, and if they determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant, and direct him to repair or rebuild the same within such

Adjoining occupants to maintain fences.  
R. S. 19, § 2.  
2 Met. 180.  
4 Met. 539.  
4 Gray, 220.  
Proceedings when a party neglects, &c.  
R. S. 19, § 3.  
14 Pick. 276.  
11 Met. 498.  
6 Allen, 437.

time as they judge reasonable, not exceeding fifteen days; and if the fence shall not be repaired or rebuilt accordingly, the complainant may make or repair the same.

SECT. 4. When a deficient fence built up or repaired by a complainant as provided in the preceding section is after due notice to each party adjudged sufficient by two or more of the fence viewers, and the value thereof with their fees ascertained by a certificate under their hands, the complainant may demand, either of the occupant or owner of the land where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the same so due, for one month after demand, he may recover the same with interest at one per cent. a month, in an action of contract.

Remedy against adjoining owner, &c., for repairing, &c., deficient fence.  
R. S. 19, § 4.  
1852, 312.  
6 Mass. 95.  
5 Pick. 503.  
14 Pick. 278.  
See 1863, 190.  
1870, 376.  
6 Allen, 487.

SECT. 5. When a controversy arises about the rights of the respective occupants in partition fences and their obligation to maintain the same, either party may apply to two or more fence viewers of the places where the lands lie, who after due notice to each party may in writing assign to each his share thereof, and direct the time within which each party shall erect or repair his share, in the manner before provided; which assignment, being recorded in the city or town clerk's office, shall be binding upon the parties and upon the succeeding occupants of the lands; who shall thereafter maintain their respective parts of said fence.

Controversies between parties about repairing, &c., how determined.  
R. S. 19, § 5.  
11 Met. 496.  
11 Cush. 450.

SECT. 6. If a party refuses or neglects to erect and maintain the part of a fence assigned to him by the fence viewers, the same may in the manner before provided be erected and maintained by any aggrieved party; and he shall be entitled to double the value thereof ascertained and recovered in the manner aforesaid.

Double damages in case, &c.  
R. S. 19, § 6.  
11 Met. 496.

SECT. 7. When in a controversy between adjoining occupants as to their respective rights in a partition fence, it appears to the fence viewers that either of the occupants had before any complaint made to them voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay the value of so much thereof as may be assigned to him to repair or maintain, to be ascertained and recovered as provided in this chapter.

Fence viewers may order compensation for repairing more than just share.  
R. S. 19, § 7.  
14 Pick. 276.  
11 Met. 496.

SECT. 8. Partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides shall otherwise agree.

Partition fences, how kept.  
R. S. 19, § 8.

SECT. 9. When lands of different persons which are required to be fenced, are bounded upon or divided from each other, by a river, brook, pond, or creek, if the occupant of the land on one side refuses or neglects to join with the occupant of the land on the other side in making a partition fence on the one side or the other, or shall disagree respecting the same, then two or more fence viewers of the place or places wherein such lands lie, on application made to them, shall forthwith view such river, brook, pond, or creek; and if they determine the same not to answer the purpose of a sufficient fence, and that it is impracticable to fence on the true boundary line without unreasonable expense, they shall, after giving notice to the parties to be present, determine how, or on which side thereof, the fence shall be set up and maintained, or whether partly on the one side and partly on the other side, as to them shall appear just, and shall reduce their determination to writing; and if either of the parties refuses or neglects to make and maintain his part of the fence according to the determination of the fence viewers, the same may be made and maintained as before provided, and the delinquent party shall be subject to the same costs and charges to be recovered in like manner.

how and where made when lands are bounded by water.  
R. S. 19, § 9.  
11 Met. 496.

SECT. 10. When lands belonging to two persons in severalty have been occupied in common without a partition fence between them, and one of the occupants desires to occupy his part in severalty, and the

Where lands have been improved without partition

fences, division  
may be made.  
R. S. 19, § 10.  
1868, 190.  
1870, 376.

other occupant refuses or neglects on demand to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, the party desiring it may have the same divided and assigned by two or more fence viewers of the same place in the manner provided in this chapter; and the fence viewers may in writing assign a reasonable time, having regard to the season of the year, for making the fence; and if the occupant complained of does not make his part of the fence within the time so assigned, the other party may, after having made up his part of the fence, make up the part of the other, and recover therefor double the expense thereof, together with the fees of the fence viewers, in the manner provided in this chapter.

Fences to be  
maintained by  
agreement of  
parties or assign-  
ment of fence  
viewers. Lands  
may be laid com-  
mon by giving  
notice.  
R. S. 19, § 15.  
1 Cush. 15.

SECT. 11. Where a division of fence between the owners of improved lands has been made either by fence viewers or under an agreement in writing between the parties, recorded in the office of the clerk of the city or town, the several owners of such lands and their heirs and assigns shall erect and support said fences agreeably to such division; but if a person lays his lands common and determines not to improve any part of the same adjoining the fence divided as aforesaid, and gives six months' notice of his determination to all the adjoining occupants of lands, he shall not be required to keep up or support said fence during the time that his lands lie common and unimproved.

When one party  
lays open en-  
closed lands, the  
other may pur-  
chase right in  
fence.  
R. S. 19, § 11

SECT. 12. When one party ceases to improve his land or lays open his enclosure, he shall not take away any part of the partition fence belonging to him and adjoining to the next enclosure, *provided* the owner or occupant thereof will allow and pay therefor so much as two or more fence viewers in writing determine to be the reasonable value thereof.

Where unin-  
proved lands are  
enclosed, &c.,  
party benefited  
shall pay, &c.  
R. S. 19, § 12.  
1847, 102.  
1852, 312.  
1 Cush. 11.

SECT. 13. When land which has lain unenclosed is afterwards enclosed or used for depasturing, the occupant or owner thereof shall pay for one-half of each partition fence standing upon the line between the same land and the land of the enclosures of any other occupant or owner, the value thereof to be ascertained in writing (in case they do not agree between themselves,) by two or more of the fence viewers of the same place wherein such partition fence stands; and if such occupant or owner, after the value has been so ascertained, neglects or refuses, for thirty days after demand made, to pay for one-half of the partition fence, the proprietor of the fence may maintain an action of contract for such value, and the costs of ascertaining the same; but the occupant or owner of unenclosed land on the island of Nantucket, used for depasturing only, shall not be subject to the foregoing provisions of this section.

Fence viewers,  
when fences are  
on town lines.  
R. S. 19, § 13.

SECT. 14. Where the line upon which a partition fence is to be made or divided is the boundary line of one or more cities or towns, or partly in one and partly in another, a fence viewer shall be taken from each place.

Water fences,  
how made.  
R. S. 19, § 14.  
11 Met. 496.

SECT. 15. When a water fence, or fence running into the water, is necessary to be made, the same shall be done in equal shares unless otherwise agreed by the parties; and in case either party refuses or neglects to make or maintain the share to him belonging, similar proceedings shall be had as in other cases of the like kind respecting other fences before mentioned.

Penalty for fence  
viewer's neglect  
of duty.  
R. S. 19, § 17.  
1839, 135.

SECT. 16. Any fence viewer duly chosen and sworn who when requested unreasonably neglects to view a fence, or to perform any other duties required of him in this chapter, shall forfeit five dollars, to be recovered by action of tort to the use of the place, or on complaint to the use of the commonwealth, and he shall also be liable for all damages to the party injured.

Fees of fence  
viewers.  
how recovered.  
R. S. 19, § 18  
1852, 312.

SECT. 17. Each fence viewer shall be paid by the person employing him at the rate of two dollars a day for the time he is so employed; and if such person neglects to pay him within thirty days after the service has been performed, he may recover in an action of tort double the amount of such fees.

POUNDS AND IMPOUNDING OF CATTLE; FIELD DRIVERS.

[See 1869, 386.]

SECT. 18. Each city and town shall at its own expense and in such places therein as the city council of the city or the inhabitants of the town direct, maintain one or more sufficient pounds. A city or town that for three months neglects to provide or maintain a sufficient pound, shall forfeit fifty dollars.

Pounds to be provided by towns.  
Penalty for neglect.  
R. S. 19, §§ 19, 20. 1848, 272.  
6 Allen, 408.  
Penalty for injuring pounds.  
R. S. 19, § 24.

SECT. 19. Whoever wilfully injures a city or town pound, shall be punished by fine not exceeding fifty dollars or by imprisonment in the common jail not exceeding ninety days.

SECT. 20. Each city and town shall annually appoint a suitable keeper of each pound therein.

Pound keeper.  
R. S. 19, § 21.

SECT. 21. Every field driver within his city or town, shall take up at any time, swine, sheep, horses, asses, mules, goats, or neat cattle, going at large in the public highways or townways or on common and unimproved lands, and not under the care of a keeper; and for any such cattle or beasts so going at large on the Lord's day, the field driver or any other inhabitant of the city or town may in an action of tort recover for each beast the same fees which the field driver is entitled to receive for like beasts when distrained and impounded. 16 Gray, 265. 1 Allen, 270.

Beasts going at large without keeper to be taken up, &c.  
R. S. 19, § 22. 1852, 312.  
21 Pick. 187.  
23 Pick. 251.  
12 Met. 198.  
2 Gray, 180.  
4 Gray, 314, 345.  
3 Allen, 30.

SECT. 22. When beasts are so taken up and distrained by a field driver, they shall be forthwith impounded in the city or town pound, and the keeper shall furnish them with suitable food and water while they are detained in his custody. 12 Cush. 98, 108. 4 Gray, 312.

to be impounded.  
R. S. 113, § 1.  
5 Cush. 263.

SECT. 23. The field driver shall be entitled to fifty cents per head for horses, asses, mules, and neat cattle, and ten cents per head for sheep, goats, and swine, so taken up by him, and the pound keeper shall be entitled to four cents per head for the animals so impounded; but if more than ten sheep are taken up at the same time, the fees for all above that number shall be only one-half of the above fees.

Fees of field driver and pound keeper.  
R. S. 113, § 2.  
See 1863, 178.

SECT. 24. The pound keeper shall not deliver to the owner any beasts so impounded, until the owner pays him his fees, the expense of keeping the beasts, and the fees of the field driver, which latter when received he shall pay to the field driver.

to be paid by owner of beasts.  
R. S. 113, § 3. •  
21 Pick. 181.

SECT. 25. When a person is injured in his land by sheep, swine, horses, asses, mules, goats, or neat cattle, he may recover his damages in an action of tort against the owner of the beasts, or by distraining the beasts doing the damage, and proceeding therewith as hereinafter directed; but if the beasts were lawfully on the adjoining lands and escape therefrom in consequence of the neglect of the person who suffered the damage to maintain his part of the division fence, the owner of the beasts shall not be liable for such damage.

Beasts doing damage, may be distrained.  
R. S. 113, § 4. 1852, 312.  
5 Greenl. 356.  
6 Mass. 80.  
16 Mass. 37.  
4 Met. 589.  
13 Met. 407.

SECT. 26. The beasts so distrained for doing damage shall be impounded in the city or town pound, or in some suitable place, under the immediate care and inspection of the person who distrained them, and he shall furnish them with suitable food and water while they remain impounded.

to be impounded.  
R. S. 113, § 5.  
13 Met. 407.

SECT. 27. If the beasts are impounded in the city or town pound, the distrainer shall leave with the pound keeper a memorandum in writing under his hand stating the cause of impounding, and the sum that he demands from the owner for the damage done by the beasts, and also for the daily charges of feeding them; and if they are impounded in any other place, he shall give a like memorandum to the owner of the beasts if demanded by him.

Person distraining to state demand.  
R. S. 113, § 6.  
21 Pick. 187.  
23 Pick. 251.  
12 Met. 198.  
13 Met. 407.  
10 Allen, 544.

SECT. 28. The pound keeper, when the beasts are in his custody, shall not deliver them to the owner until the owner pays him his fees, the sum so demanded by the distrainer for the damages and charges aforesaid, the expense of advertising the beasts if they are advertised, and all other legal costs and expenses.

Beasts not to be delivered until costs, &c., are paid.  
R. S. 113, § 7.

Notice to be given to owner or keeper.

R. S. 113, § 8.  
21 Pick. 137.  
23 Pick. 251.  
12 Met. 113, 193.  
7 Cush. 356.  
2 Gray, 173.  
10 Allen, 544.

or posted up, and published in a newspaper, in case, &c.  
R. S. 113, § 9.  
3 Allen, 39.

SECT. 29. When beasts are impounded, the person impounding them shall within twenty-four hours thereafter give notice thereof in writing to the owner or person having the care of them, if known and living within six miles from the place of impounding, which notice shall be delivered to the party or left at his place of abode, and shall contain a description of the beasts and a statement of the time, place, and cause, of impounding.

SECT. 30. If there is no person entitled to notice according to the provisions of the preceding section, the person impounding the beasts shall within forty-eight hours thereafter cause to be posted in some public place in the city or town, and in a public place in each of any two adjoining cities or towns, if within four miles from the place where they were taken, a written notice containing a description of the beasts and a statement of the time, place, and cause, of impounding them; and in such case, if the value of the beasts exceeds thirty dollars, and if no person appears to claim them within seven days after the day of impounding, a like notice shall be published three weeks successively in some public newspaper if there is any published within twenty miles from the place of impounding, the first publication to be within fifteen days after the day of impounding.

Sum due from owner, how determined.

R. S. 113, § 10.

SECT. 31. If the owner or keeper of the beasts is dissatisfied with the claim of the person impounding them, he may have the amount for which he is liable ascertained and determined by two disinterested and discreet persons, to be appointed and sworn for that purpose by a justice of the peace or by the city or town clerk; and the sum so determined by them shall be received instead of the sum demanded by the person who impounded the beasts, and they shall thereupon be delivered to the owner or keeper thereof.

Same subject.  
R. S. 113, § 11.  
21 Pick. 55.

SECT. 32. If the sum for which the beasts are impounded and detained is not paid within fourteen days after notice of the impounding has been given as before directed, or after the last publication of such notice in a newspaper, the person who impounded them shall apply to a justice of the peace, or to the city or town clerk, and obtain a warrant to two disinterested and discreet persons, to be appointed and sworn by the justice or clerk, and the person so appointed shall ascertain and determine the sum, due from the owner or keeper of the beasts for the damages, costs, and expenses, for which they are impounded and detained, including a reasonable compensation for their own services.

If not paid, beasts to be sold.  
R. S. 113, § 12.  
21 Pick. 55.

SECT. 33. If the sum so found to be due is not forthwith paid, the person who impounded the beasts shall cause them to be sold by auction, in the city or town where they are impounded, first advertising the sale by posting up a notice thereof twenty-four hours beforehand at some public place in the same city or town.

proceeds, how disposed of.  
R. S. 113, § 13.

SECT. 34. The proceeds of such sale after paying all said damages, costs, expenses, and charges for advertising and selling the beasts, shall be deposited in the treasury of the city or town, for the use of the owner of the beasts, in case he substantiates his claim thereto within two years from the sale.

Beasts escaped or rescued may be retaken.  
R. S. 113, § 14.

SECT. 35. If beasts lawfully distrained or impounded escape or are rescued, the pound keeper, field driver, or other person, who distrained them, may at any time within seven days thereafter retake the beasts and hold and dispose thereof as if no such escape or rescue had taken place.

Penalty for rescuing beasts distrained.  
R. S. 113, § 15.  
1862, 312.  
1 Mass. 168.  
17 Mass. 342.  
4 Mass. 471.  
5 Cush. 267.

SECT. 36. Whoever rescues beasts lawfully distrained or impounded for any cause whatever, shall be liable in an action of tort brought by any person injured to pay all damages which such person sustains thereby, and the fees and charges incurred before the rescue; and he shall also forfeit a sum not less than five nor more than twenty dollars, to be recovered by complaint.



SECT. 37. The defendant in an action brought for rescuing beasts distrained or impounded shall not be allowed to allege or give in evidence the insufficiency of the fences, or any other fact or circumstance to show that the distress or impounding was illegal; but if there is such ground of objection to the proceeding of which he is entitled to avail himself, he may have the advantage thereof in an action of replevin.

SECT. 38. If the owner of a ram or he goat suffers it to go at large out of his enclosure between the first day of July and the twenty-fifth day of December, he shall forfeit five dollars for each offence, if prosecuted within thirty days next after such ram or he goat is found going at large, to be recovered on complaint in the county in which such owner lives.

Legality of distress, how tried.  
R. S. 118, § 18.  
4 Mass. 471.  
5 Pick. 514.  
See Ch. 146.

Rams and he goats, when not to go at large.  
R. S. 19, § 28.

## TITLE VIII.

### OF THE PUBLIC HEALTH AND BURIALS.

CHAPTER 26. — Of the Preservation of the Public Health.

CHAPTER 27. — Of the Promotion of Anatomical Science.

CHAPTER 28. — Of Cemeteries and Burials.

## CHAPTER 26.

### OF THE PRESERVATION OF THE PUBLIC HEALTH.

*Persons hunting infants—  
1876-1878*

#### SECTION

1. Towns to choose board of health or health officer; or selectmen to act.
2. City council to appoint board of health, or make either or both branches, or a committee, the board.
3. Board may appoint physician.
4. Compensation of physician, &c.

#### NUISANCES, CONTAGION, &c.

5. Board to make regulations respecting nuisances, &c.
6. to give notice of their regulations.
7. to examine into and abate nuisances, &c.
8. to order nuisances, &c., abated; penalty on owner of land, &c., for refusing.
9. Order of abatement, how served.
10. Owner not complying, board to remove the nuisance at his expense.
11. Board may notify occupants of unfit dwelling place to quit, &c.
12. When a party is convicted of nuisance, court may order it destroyed.
13. Superior court may issue injunctions in cases of nuisance.

#### SECTION

14. Board may make compulsory examination of premises, when refused, &c.
15. may grant permits for the removal of infected articles or sick persons.
16. to make necessary provision for persons infected with dangerous diseases.
17. If infected person cannot be removed, others may be.
18. Persons may be stationed on borders of other states, to examine, &c.
19. Two justices of the peace may issue warrant to remove sick persons.
20. One justice may issue warrant to sheriff to secure infected articles, who may impress aid.
21. Justice may take up houses and stores, &c. for safe keeping of goods, &c.
22. Officers may break open houses, shops, &c., and command aid.
23. Expenses to be paid by owners of goods.
24. Town to make compensation for houses, &c., or services impressed.
25. Removal of prisoners attacked with disease.
26. Return of removal to be made to court; such removal not an escape.

## VACCINATION.

## SECTION

27. Parents, &c., to cause children and wards to be vaccinated. Penalty for neglect.  
 28. Selectmen, &c., to enforce vaccination and re-vaccination. Penalty for neglect.  
 29. Towns to provide means for vaccination.  
 30. Inmates of manufactories, almshouses, &c., to be vaccinated.  
 31. Towns may make further provision for vaccination.

## QUARANTINE.

32. Towns may establish quarantine ground.  
 33. Two or more towns may establish a common quarantine ground.  
 34. Board of health may establish the quarantine of vessels.  
 35. Quarantine regulations to extend to all persons, &c.  
 36. Penalty for violation after public notice.  
 37. Vessels suspected of infection to be ordered to quarantine ground.  
 38. Penalty if master, seaman, &c., refuse to make answer on oath, &c.  
 39. Quarantine expenses to be paid by person or owner.

## HOSPITALS AND DANGEROUS DISEASES.

40. Hospitals may be provided by towns.  
 41. to be under orders of board of health.  
 42. not to be established within one hundred rods of house in adjoining town, unless, &c.  
 43. Physicians and others in hospitals to be subject to board of health.

## SECTION

44. Board of health to provide hospital or other place when, &c.; may cause sick and infected persons to be removed to hospital.  
 45. Selectmen to give notice, by suitable signals, of infected places.  
 46. Penalty on physicians and others in hospitals, &c., for violating regulations.  
 47. Every householder to give notice of dangerous disease in his family. Penalty.  
 48. Penalty on physician for not giving notice of dangerous disease.  
 49. Expenses recoverable of individuals, how paid for.  
 50. Fines and forfeitures to inure to use of town.  
 51. Certain provisions not to apply to small-pox.

## OFFENSIVE TRADES.

52. Board to assign places for exercising offensive trades, and may prohibit.  
 53. Superior court may, on complaint, revoke such assignment.  
 54. Action for damages from nuisance.  
 55. Orders of prohibition, &c., to be served on occupant. If he refuses to obey, board may prevent. Penalty.  
 56. Appeal by person aggrieved. Proceedings.  
 57. Trade not to be exercised pending proceedings.  
 58. Verdict of jury may alter, &c., order, to be returned for acceptance.  
 59. Costs, — how and when assessed, on whom, and to what amount.  
 60. Chapter extends to cities.

[See 1866, 271; 1869, 420; 1871, 167; 1872, 275.] 1874, 121

SECTION 1. A town respecting which no provision is made by special law for choosing a board of health, may, at its annual meeting or at a meeting legally warned for the purpose, choose a board of health, to consist of not less than three nor more than nine persons; or may choose a health officer. If no board or officer is chosen the selectmen shall be the board of health.

SECT. 2. Except where different provision is made by law, the city council of a city may appoint a board of health; may constitute either branch of such council, or a joint or separate committee of their body, a board of health, either for general or special purposes, and may prescribe the manner in which the powers and duties of the board shall be exercised and carried into effect. In default of the appointment of a board with full powers, the city council shall have the powers and perform the duties prescribed to boards of health in towns.

SECT. 3. Every board of health may appoint a physician to the board, who shall hold his office during its pleasure.

SECT. 4. The board shall establish the salary or other compensation of such physician, and shall regulate all fees and charges of persons employed by it in the execution of the health laws and of its own regulations.

## NUISANCES, CONTAGION, &amp;c.

[See 1866, 211.]

SECT. 5. The board shall make such regulations as it judges necessary for the public health and safety, respecting nuisances, sources of filth, and causes of sickness, within its town, or on board of vessels within its harbor; and respecting articles which are capable of containing or conveying infection or contagion, or of creating sickness, brought into or conveyed from its town, or into or from any vessel. Whoever violates

any such regulation shall forfeit a sum not exceeding one hundred dollars.

SECT. 6. Notice shall be given by the board of all regulations made by it, by publishing the same in some newspaper of its town, or where there is no such newspaper by posting them up in some public place in the town. Such notice shall be deemed legal notice to all persons.

Board to give notice of regulations  
R. S. 21, § 8.

SECT. 7. The board shall examine into all nuisances, sources of filth, and causes of sickness, within its town, or in any vessel within the harbor of such town, that may in its opinion be injurious to the health of the inhabitants, and the same shall destroy, remove, or prevent, as the case may require.

to examine into and abate nuisances, &c.  
R. S. 21, § 9.

SECT. 8. The board or the health officer shall order the owner or occupant at his own expense to remove any nuisance, source of filth, or cause of sickness, found on private property, within twenty-four hours or such other time as it deems reasonable after notice served as provided in the following section; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding twenty dollars for every day during which he knowingly permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof.

to order nuisances, &c., abated.  
penalty for refusing:  
1849, 211, § 3.  
1856, 339.  
See Ch. 87, § 5.  
Ch. 88, §§ 40, 42.  
98 Mass. 431.

SECT. 9. Such order shall be made in writing, and served by any person competent to serve a notice in a civil suit, personally on the owner, occupant, or his authorized agent; or a copy of the order may be left at the last and usual place of abode of the owner, occupant, or agent, if he is known and within the state. But if the premises are unoccupied and the residence of the owner or agent is unknown or without the state, the notice may be served by posting the same on the premises and advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct.

Order for abatement, how served.  
1849, 211, § 4.  
See Ch. 87, § 5.  
Ch. 88, §§ 40, 42.

SECT. 10. If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth, or cause of sickness, to be removed, and all expenses incurred thereby shall be paid by the owner, occupant, or other person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof.

Owner not complying, board to remove the nuisance at his expense.  
1849, 211, § 5.  
See Ch. 87, § 5.  
Ch. 88, §§ 40, 42.  
98 Mass. 432.  
Board may notify occupants of unfit dwelling place to quit, &c.  
1850, 108.

SECT. 11. The board, when satisfied upon due examination that any cellar, room, tenement, or building, in its town, occupied as a dwelling place, has become by reason of the number of occupants, or want of cleanliness, or other cause, unfit for such purpose and a cause of nuisance or sickness to the occupants or the public, may issue a notice in writing to such occupants, or any of them, requiring the premises to be put into a proper condition as to cleanliness, or if they see fit requiring the occupants to remove or quit the premises within such time as the board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owners, or may remove the occupants forcibly and close up the premises, and the same shall not be again occupied as a dwelling place without the consent in writing of the board. If the owner thereafter occupies or knowingly permits the same to be occupied without such permission in writing, he shall forfeit a sum not less than ten nor more than fifty dollars.

SECT. 12. When a person is convicted on an indictment for a common nuisance injurious to the public health, the court in their discretion may order it to be removed or destroyed at the expense of the defendant, under the direction of the board of health; and the form of the warrant to the sheriff or other officer may be varied accordingly.

When a party is convicted of a nuisance, court may order it destroyed.  
R. S. 21, § 12.

SECT. 13. The superior court, or a justice thereof in term time or vacation, may, either before or pending a prosecution for a common nuisance affecting the public health, issue an injunction to stay or prevent the same until the matter shall be decided by a jury or otherwise;

Court may issue injunctions, in cases of nuisance.  
R. S. 21, § 13.  
1859, 193.

may enforce such injunction according to the course of proceedings in chancery; and may dissolve the same when the court or one of the justices shall think proper.

Board may make compulsory examination of premises, when refused, &c.  
R. S. 21, § 14.

1873. c. 2

SECT. 14. When the board think it necessary for the preservation of the lives or health of the inhabitants, to enter any land, building, or vessel, within its town, for the purpose of examining into and destroying, removing, or preventing, any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to two justices of the peace of the county, stating the facts of the case so far as he has knowledge thereof, and the justices may thereupon issue a warrant directed to the sheriff or either of his deputies, or to any constable of such town, commanding him to take sufficient aid, and being accompanied by any two or more members of said board, at any reasonable time to repair to the place where such nuisance, source of filth, or cause of sickness, complained of may be, and the same to destroy, remove, or prevent, under the directions of such members of the board.

may permit removal of infected articles, &c.  
R. S. 21, § 15.  
shall make provision for persons infected.  
1837, 244, § 1.  
1848, 119.  
2 Cush. 52.  
See § 51, and 1872, 189.

SECT. 15. The board may grant permits for the removal of any nuisance, infected articles, or sick person, within the limits of its town, when it thinks it safe and proper so to do.

SECT. 16. When any person coming from abroad or residing in any town in this state is infected, or lately has been infected, with the plague or other sickness dangerous to the public health, except as is otherwise provided in this chapter, the board shall make effectual provision in the manner which it judges best for the safety of the inhabitants, by removing such person to a separate house or otherwise, and by providing nurses and other assistance and necessities, which shall be at the charge of the person himself, his parents, or master, if able, otherwise at the charge of the town to which he belongs; and if he is not an inhabitant of any town, at the charge of the commonwealth.

If infected person cannot be removed, others may be, &c.  
R. S. 21, § 17.  
1838, 158.  
See § 51, and 1872, 189.

SECT. 17. If the infected person cannot be removed without danger to his health, the board shall make provision for him as directed in the preceding section in the house in which he may be; and may cause the persons in the neighborhood to be removed, and take such other measures as it judges necessary for the safety of the inhabitants.

Persons may be stationed in places bordering on other states, to examine, &c.  
R. S. 21, § 18.

SECT. 18. The board of health of any town near to or bordering upon either of the neighboring states, may appoint, by writing, suitable persons to attend at places by which travellers may pass from infected places in other states; who may examine such travellers as it suspects of bringing any infection dangerous to the public health, and if need be may restrain them from travelling until licensed thereto by the board of health of the town to which such person may come. A traveller coming from such infected place who shall without such license travel within this state, (except to return by the most direct way to the state from whence he came,) after he has been cautioned to depart by the persons so appointed, shall forfeit a sum not exceeding one hundred dollars.

Two justices of the peace may issue warrant to remove sick persons.  
R. S. 21, § 19.

SECT. 19. Two justices of the peace may if need be make out a warrant directed to the sheriff of the county, or his deputy, or to any constable, requiring them under the direction of the board to remove any person infected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants, and other necessities, for the accommodation, safety, and relief, of the sick.

One justice may issue warrant to sheriff to secure infected articles, who may impress aid.  
R. S. 21, § 20.

SECT. 20. When, upon the application of the board, it appears to a justice of the peace that there is just cause to suspect that any baggage, clothing, or goods, found within the town, are infected with the plague or other disease which may be dangerous to the public health, the justice shall, by warrant directed to the sheriff or his deputy, or to any constable, require him to impress so many men as said justice may judge necessary to secure such baggage, clothing, or other goods, and

to post said men as a guard over the house or place where such articles are lodged; who shall take effectual care to prevent persons from removing or coming near the same, until due inquiry is made into the circumstances.

SECT. 21. The justice may by the same warrant, if it appears to him necessary, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe keeping of such articles; and the board may cause them to be removed thereto, or otherwise detained, until, in the opinion of the board, they are freed from infection.

Justice may take houses and stores, &c., for safe keeping of goods, &c.  
R. S. 21, § 21.

SECT. 22. The officers, in the execution of the warrant, shall if need be break open any house, shop, or other place, mentioned in the warrant, where such articles are; and may require such aid as is necessary to effect the execution of the warrant. Whoever neglects or refuses to assist in the execution of the warrant, after being commanded to assist by either of said officers, shall forfeit a sum not exceeding ten dollars.

Officers may break open houses, shops, &c., and command aid  
R. S. 21, § 22.

SECT. 23. The charges of securing such articles, and transporting and purifying the same, shall be paid by the owners, at such rates and prices as may be determined by the board.

Expenses to be paid by owners of goods.  
R. S. 21, § 23.

SECT. 24. When a sheriff or other officer impresses or takes up any houses, stores, lodging, or other necessities, or impresses men, as provided in this chapter, the several parties interested shall be entitled to a just compensation therefor, to be paid by the town in which such persons or property are so impressed.

Town to make compensation for houses, &c., or services impressed.  
R. S. 21, § 24.

SECT. 25. When a person confined in a common jail, house of correction, or workhouse, has a disease which, in the opinion of the physician of the board or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall by its order in writing direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until its further order. If such person recovers from the disease he shall be returned to said prison or other place of confinement.

Removal of prisoners attacked with disease.  
R. S. 21, § 25.

SECT. 26. If the person so removed is committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

Return of removal to be made to court. Such removal not an escape.  
R. S. 21, § 26.

#### VACCINATION.

SECT. 27. Parents and guardians shall cause their children and wards to be vaccinated before they attain the age of two years, and revaccinated whenever the selectmen or mayor and aldermen shall after five years from the last vaccination require it. For every year's neglect the party offending shall forfeit the sum of five dollars.

Parents, &c., to cause children, &c., to be vaccinated. Penalty for neglect  
1855, 414, §§ 1, 3. 112 m. 489, 177

SECT. 28. The selectmen and mayor and aldermen shall require and enforce the vaccination of all the inhabitants, and, whenever in their opinion the public health requires it, the revaccination of all the inhabitants who do not prove to their satisfaction that they have been successfully vaccinated or revaccinated within five years. All persons over twenty-one years of age, not under guardianship, who neglect to comply with any such requirement, shall forfeit the sum of five dollars.

Selectmen, &c., to enforce vaccination, &c. Penalty for neglect.  
1855, 414, §§ 3, 4.

SECT. 29. Towns shall furnish the means of vaccination to such of their inhabitants as are unable to pay for the same.

Towns to provide means.  
1855, 414, § 6. Inmates of manufacturing, almshouses, &c., to be vaccinated.

SECT. 30. Incorporated manufacturing companies; superintendents of almshouses, state reform, and industrial schools, lunatic hospitals, or and sick are received; masters of houses

1855, 414, §§ 5, 6. of correction, jailers, keepers of prisons, the warden of the state prison; and superintendents or officers of all other institutions supported or aided by the state; shall at the expense of their respective establishments or institutions cause all inmates thereof to be vaccinated immediately upon their entrance thereto, unless they produce sufficient evidence of previous successful vaccination within five years.

Towns may make further provision for vaccination.  
R. S. 21, § 45.

SECT. 31. Each town may make further provision for the vaccination of its inhabitants, under the direction of the board or a committee chosen for the purpose.

#### QUARANTINE.

may establish a quarantine ground.  
R. S. 21, § 27.

SECT. 32. A town may establish a quarantine ground in a suitable place either within or without its own limits; but if such place is without its limits, the assent of the town within whose limits it may be established shall be first obtained.

two or more towns may establish a common quarantine ground.  
R. S. 21, § 28.

SECT. 33. Two or more towns may at their joint expense establish a quarantine ground for their common use in any suitable place either within or without their own limits; but if such place is without their limits, they shall first obtain the assent of the town within whose limits it may be.

Board of health may establish quarantine of vessels.  
R. S. 21, § 29.

SECT. 34. The board of health in each seaport town may from time to time establish the quarantine to be performed by vessels arriving within its harbor; and may make such quarantine regulations as it judges necessary for the health and safety of the inhabitants.

Quarantine regulations to extend to all, &c.  
R. S. 21, § 30.

SECT. 35. Such regulations shall extend to all persons, goods, and effects, arriving in such vessels, and to all persons who may visit or go on board of the same.

Penalty for violation after notice.  
R. S. 21, § 31.

SECT. 36. Whoever violates any such regulation after notice thereof has been given in the manner before provided in this chapter, shall forfeit a sum not less than five nor more than five hundred dollars.

Vessels suspected of infection to be ordered to quarantine.  
R. S. 21, § 32.

SECT. 37. The board in each seaport town may at all times cause a vessel arriving in such port, when such vessel or the cargo thereof is in its opinion foul or infected so as to endanger the public health, to be removed to the quarantine ground and thoroughly purified at the expense of the owners, consignees, or persons in possession of the same; and may cause all persons arriving in or going on board of such vessel, or handling the cargo, to be removed to any hospital under the care of the board, there to remain under their orders.

Penalty, if master, seaman, &c., refuse to answer on oath, &c.  
R. S. 21, § 33.

SECT. 38. If a master, seaman, or passenger, belonging to a vessel on board of which any infection then is or has lately been, or is suspected to have been, or which has been at or has come from a port where any infectious distemper prevails that may endanger the public health, refuses to make answer on oath to such questions as may be asked him relating to such infection or distemper by the board of health of the town to which such vessel may come, (which oath any member of the board may administer,) such master, seaman, or passenger, shall forfeit a sum not exceeding two hundred dollars; and if not able to pay said sum he shall suffer six months' imprisonment.

Quarantine expenses, how paid by person or owner.  
R. S. 21, § 34.

SECT. 39. All expenses incurred on account of any person, vessel, or goods, under quarantine regulations, shall be paid by such person or the owner of such vessel or goods respectively.

#### HOSPITALS AND DANGEROUS DISEASES.

[See 1870, 306.]

Hospitals may be provided by towns.  
R. S. 21, § 35.  
to be under

SECT. 40. Any town may establish within its limits, and be constantly provided with, one or more hospitals for the reception of persons having a disease dangerous to the public health.

SECT. 41. Such hospitals shall be subject to the orders and regula-

tions of the board, or of a committee of the town appointed for that purpose.

SECT. 42. No such hospital shall be established within one hundred rods of an inhabited dwelling-house situated in an adjoining town, without the consent of such town.

SECT. 43. When a hospital is so established, the physician, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits of the same, and all furniture and other articles used or brought there, shall be subject to such regulations as may be made by the board of health or the committee appointed for that purpose.

SECT. 44. When a disease dangerous to the public health breaks out in any town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants; which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless the condition of such person will not admit of his removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and all persons residing in or in any way concerned within the same shall be subject to the regulations of the board as before provided.

SECT. 45. When such disease is found to exist in a town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety.

SECT. 46. If a physician or other person in any of the hospitals or places of reception before mentioned, or who attends, approaches, or is concerned with, the same, violates any of the regulations lawfully made in relation thereto, either with respect to himself, or his or any other person's property, he shall for each offence forfeit a sum not less than ten nor more than one hundred dollars.

SECT. 47. When a householder knows that a person within his family is taken sick of small-pox or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town in which he dwells. If he refuses or neglects to give such notice, he shall forfeit a sum not exceeding one hundred dollars.

SECT. 48. When a physician knows that any person whom he is called to visit is infected with small-pox or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town; and if he refuses or neglects to give such notice, he shall forfeit for each offence a sum not less than fifty nor more than one hundred dollars.

SECT. 49. Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, and which are recoverable of a private person or corporation by virtue of any provisions of law, may be sued for and recovered in an action of contract.

SECT. 50. Fines and forfeitures incurred under general laws, the special laws applicable to a town, or the by-laws and regulations of a town relating to health, shall inure to the use of such town.

SECT. 51. The provisions of sections sixteen, seventeen, forty-four, forty-five, and forty-six, shall not apply to small-pox.

orders of board of health.  
R. S. 21, § 36.  
Hospitals not to be within, &c.  
R. S. 21, § 37.

Physicians, &c., in hospitals, subject to board of health.  
R. S. 21, § 39.

Board of health to provide hospital, &c., and remove sick, &c.  
R. S. 21, § 2.  
1837, 244, § 2.  
1849, 119.  
See § 51, and 1872, 189.

Selectmen to give notice of infected places.  
R. S. 21, § 41.  
1838, 158.  
See § 51, and 1872, 189.

Penalty on persons in hospitals, &c., for violating regulations.  
R. S. 21, § 42.  
1833, 158.  
See § 51, and 1872, 189.

Householders to give notice of dangerous diseases.  
Penalty.  
R. S. 21, § 43.

Penalty on physician for not giving notice of dangerous disease.  
R. S. 21, § 44.

Expenses recoverable of individuals; how sued for.  
1849, 211, § 6.  
93 Mass. 442.

Fines and forfeitures to inure to use of town.  
1849, 211, § 7.

Small-pox.  
1838, 159; 1840, 39; 1848, 119.  
See 1872, 189.

Board to assign places for exercising offensive trades, and may prohibit.

#### OFFENSIVE TRADES.

SECT. 52. The board shall from time to time assign certain places for the exercising of any trade or employment which is a nuisance or hurtful to the inhabitants, or dangerous to the public health, or the ex-

R. S. 21, § 47.  
1855, 391, § 1.  
See § 55.  
16 Gray, 238.  
8 Allen, 325.  
11 Allen, 398.  
97 Mass. 223.

116 M. 254

Superior court  
may, on com-  
plaint, revoke  
such assignment.  
R. S. 21, § 48.  
1859, 196.

Action for dam-  
ages from nul-  
lance.

R. S. 21, § 49.

Orders of prohi-  
bition, &c., to be  
served on occu-  
pant. If he re-  
fuses to obey,  
board may pre-  
vent.

Penalty.  
1855, 391, § 2.  
8 Allen, 325.

Appeal, by person  
aggrieved.  
Proceedings.  
1855, 391, § 8.  
1859, 196.  
See 1865, 263.

Trade not to be  
exercised mean-  
while.

1855, 391, § 4.  
Verdict of jury  
may alter, &c.,  
order; to be re-  
turned for ac-  
ceptance, &c.  
1855, 391, § 5.

Costs, — how and  
when assessed;  
on whom; and  
to what amount.  
1855, 391, § 6.

Chapter extends  
to cities.

ercise of which is attended by noisome and injurious odors, or is other-  
wise injurious to their estates, and may prohibit the exercise of the  
same in places not so assigned; the board may also forbid the ex-  
ercise of such trade or employment within the limits of the town or  
in any particular locality thereof. All such assignments shall be en-  
tered in the records; and may be revoked when the board shall think  
proper.

SECT. 53. When it appears on a trial before the superior court for  
the county, upon a complaint made by any person, that any place or  
building so assigned has become a nuisance, by reason of offensive  
smells or exhalations proceeding from the same, or is otherwise hurtful  
or dangerous to the neighborhood or to travellers, the court may revoke  
such assignment and prohibit the further use of such place or building  
for the exercise of either of the aforesaid trades or employments, and  
may cause such nuisance to be removed or prevented.

SECT. 54. A person injured either in his comfort or the enjoyment  
of his estate by such nuisance, may have an action of tort for the dam-  
age sustained thereby.

SECT. 55. Orders of prohibition under section fifty-two shall be  
served upon the occupant or person having charge of the premises  
where such trade or employment is exercised. If the party upon  
whom such order is served, for twenty-four hours after such service  
refuses or neglects to obey the same, the board shall take all neces-  
sary measures to prevent such exercise; and the person so refusing or  
neglecting shall forfeit a sum not less than fifty nor more than five hun-  
dred dollars.

SECT. 56. Any person aggrieved by such order may appeal there-  
from, and shall within three days from the service thereof upon him  
apply to the superior court, if in session in the county where such order  
is made, or in vacation to any justice of said court, for a jury; and such  
court or justice shall issue a warrant for a jury, to be impanelled at a  
time and place expressed in the warrant, in the manner provided in  
regard to the laying out of highways.

SECT. 57. During the pendency of the appeal such trade or employ-  
ment shall not be exercised contrary to the order; and upon any viola-  
tion of the same the appeal shall forthwith be dismissed.

SECT. 58. The verdict of the jury, which may either alter the order,  
or affirm or annul it in full, shall be returned to the court for accept-  
ance as in case of highways; and said verdict when accepted shall have  
the authority and effect of an original order from which no appeal had  
been taken.

SECT. 59. If the order is affirmed by the verdict, the town shall  
recover costs against the appellant; if it is annulled, the appellant shall  
recover damages and costs against the town; and if it is altered, the  
court may render such judgment as to costs as in their discretion may  
seem just.

SECT. 60. The provisions of this chapter extend to cities so far as  
the same are not inconsistent with their several charters or acts in  
amendment thereof.

[NOTE. — The provisions of this chapter are extended to lands injurious to health, or offensive to per-  
sons residing in the vicinity and deemed nuisances (1868, 160).

For an act concerning slaughter-houses and noxious and offensive trades, see 1871, 167.]



## CHAPTER 27.

## OF THE PROMOTION OF ANATOMICAL SCIENCE.

## SECTION

1. Overseers of the poor, &c., to permit physicians to take dead bodies in certain cases.
2. Physicians, &c., to give bond on receiving a dead body.

## SECTION

3. Persons having charge of poorhouse, &c., to give notice of death.
4. Dead bodies not to be given to physicians if claimed by friends, or if deceased requested to be buried, &c.

SECTION 1. The overseers of the poor of a town, the mayor and aldermen of a city, and the inspectors and superintendent of a state almshouse, may to any physician or surgeon, upon his request, give permission to take the bodies of such persons dying in such town, city, or almshouse, as are required to be buried at the public expense, to be by him used within the state for the advancement of anatomical science; preference being given to medical schools established by law, for their use in the instruction of students.

Overseers of poor, &c., to give dead bodies to physicians in certain cases.  
1845, 242, § 1.  
1856, 323, § 1.

SECT. 2. Every physician or surgeon, before receiving any such dead body, shall give to the board of officers surrendering the same to him, a sufficient bond that each body shall be used only for the promotion of anatomical science within this state, and so as in no event to outrage the public feeling; and that, after having been so used, the remains thereof shall be decently buried.

Physicians, &c., to give bond on receiving a dead body.  
R. S. 22, § 12.

SECT. 3. Persons having charge of a poorhouse, workhouse, or house of industry, in which a person required to be buried at the public expense dies, shall forthwith give notice of such death to the overseers of the poor of the town or to the mayor and aldermen of the city in which such death occurs; and except in case of necessity the body of such person shall not be buried until such notice is given, and permission therefor granted by such overseers or mayor and aldermen; nor without their permission shall the body be surrendered for dissection or mutilation.

Persons having charge of poorhouse, &c., to give notice of death.  
1845, 242, § 1.

SECT. 4. If the deceased person during his last sickness, of his own accord requested to be buried, or if, within twenty-four hours after his death, any person claiming to be and satisfying the proper authorities that he is a friend or of kindred to the deceased, asks to have the body buried, or if such deceased person was a stranger or traveller who suddenly died, the body shall not be so surrendered, but shall be buried.

When dead bodies are not to be given to physicians, &c.  
1845, 242, § 2.

## CHAPTER 28.

[See 1865, 253; 1868, 104, 112; 1869, 35; 1870, 225, and Gen. Stat. ch. 43, § 89.]

## OF CEMETERIES AND BURIALS.

## SECTION

1. Cemetery corporations may be organised.
2. Powers, duties, and liabilities.
3. Lots to be indivisible, but inheritable; representative of, how designated.
4. Towns to provide burial places.
5. Private land not to be used for burial purposes, except, &c.
6. Boards of health to make necessary regulations, &c.

## SECTION

7. Boards of health to give notice of regulations.
8. Notice to be given before closing tombs, &c., by order of board.
9. Appeal from order of board.
10. to be tried by a jury. Costs.
11. Penalty for interments in violation of this chapter.
12. for injury to tombs or cemeteries, &c.

SECTION 1. Ten or more persons desirous of procuring, establishing, and preparing, a cemetery or burial place, or being the majority in inter-

Cemetery corporations may be organised.

1874, 190  
1875 = 174

1841, 114, § 1.  
1862, 56, §§ 1, 2.  
103 Mass. 103.

Powers, duties,  
and liabilities.  
1841, 114, §§ 2,  
3, 4.  
1862, 56, § 2.  
See 1866, 104.

Lots to be indi-  
visible, but in-  
heritable. Rep-  
resentative of,  
how designated.  
1841, 114, § 5.  
See 1869, 36.

Burial places.  
1866, 257, § 1.

private land  
not to be used  
for, except, &c.  
1866, 257, §§ 2, 3,  
10. See § 11.  
92 Mass. 283.

Boards of health  
to make regula-  
tions, &c.  
R. S. 21, § 7.  
1866, 257, § 5.  
8 Cush. 68.  
18 Allen, 546.

to give notice  
of regulations.  
R. S. 21, § 8.  
1866, 257, § 6.  
See § 11.

Notice to be  
given before  
closing tombs,  
&c., by order of  
board.  
1866, 257, § 9.

Appeal from  
order of board.  
1866, 257, § 7.  
1869, 196.

to be tried by  
a jury. Costs.  
1866, 257, § 7.

est of the proprietors of an existing cemetery, may organize as a corporation in the manner provided in chapter sixty-seven. But in the case of an existing cemetery, the corporation shall not make sale of nor impair the right of any proprietor.

SECT. 2. Such corporation shall have the powers and privileges, and be subject to the duties, restrictions, and liabilities, of chapter sixty-eight, and to the provisions of the first sixteen sections of chapter sixty-seven; may take and hold so much real and personal estate as may be necessary for the objects of its organization, which shall be applied exclusively to the furtherance of such objects; may lay out such real estate into lots, and upon such terms, conditions, and regulations, as the corporation shall prescribe, may grant and convey the exclusive right of burial in and of erecting tombs or cenotaphs upon any lot, and of ornamenting the same.

SECT. 3. Lots in such cemetery shall be held indivisible, and upon the decease of a proprietor, his heirs at law, or the devisees of such lot if devised, shall succeed to his privileges. If there is more than one heir or devisee, they shall within nine months from such decease designate in writing to the clerk of the corporation which of their number shall represent the lot; and on their failure so to designate, the board of trustees or directors of the corporation shall enter of record which of said heirs or devisees shall represent the lot while such failure continues.

SECT. 4. Each town and city shall provide one or more suitable places for the interment of persons dying within its limits.

SECT. 5. Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, shall be used for the purpose of burial, unless by permission of the town or of the mayor and aldermen of the city in which the same is situated.

SECT. 6. Boards of health may make all regulations which they judge necessary concerning burial grounds and interments within their respective limits; may prohibit the use of tombs by undertakers, (as places of deposit for bodies committed to them for burial,) for the purpose of speculation, and may establish penalties not exceeding one hundred dollars for any breach of such regulations.

SECT. 7. Notice of such regulations shall be given by publishing the same in some newspaper of the town, or city, or, if there is no such newspaper, by posting a copy in some public place therein; which shall be deemed legal notice to all persons.

SECT. 8. Before a tomb, burial ground, or cemetery, is closed by order of the board of health, for a time longer than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if so many there are, of the proprietors of such burial ground or cemetery, and notice shall also be published two successive weeks at least preceding such hearing, in two newspapers, if so many there are, published in the county.

SECT. 9. The owner of a tomb aggrieved by the order of the board of health closing any tomb, burial ground, or cemetery, may appeal therefrom, and at any time within six months from the date of the order enter his appeal in the superior court; and the appellant shall give the board of health fourteen days' notice of his appeal previous to the entry thereof. But the order of the board shall remain in force until a decision shall be had on the appeal.

SECT. 10. Appeals shall be tried in regular course before a jury, and if the jury find that the tomb, burial ground, or cemetery, so closed, was not a nuisance, nor injurious to the public health at the time of the order, the court shall rescind the same so far as it affects such tomb, burial ground, or cemetery, and execution for costs of the appeal shall

issue in favor of the appellant against the town or city in which the same was situated. But if the order is sustained, execution shall issue for double costs against the appellant in favor of the board of health for the use of the town or city.

SECT. 11. For every interment in violation of section five in a town or city in which the notice prescribed in section seven has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars.

Penalty for violation of this chapter: 1855, 257, § 4.

SECT. 12. Whoever wrongfully destroys, impairs, injures, or removes, a tomb, gravestone, building, fence, railing, or other thing, lawfully erected in or around a place of burial or cemetery, or a tree, shrub, or plant, situate within its limits; or wrongfully injures a walk or path therein, or places rubbish or offensive matter within a place of burial or cemetery, or commits any nuisance therein, or in any way desecrates or disfigures the same, shall forfeit for every such offence not less than five nor more than one hundred dollars. Upon the trial of a prosecution for the recovery of such penalty, use and occupation for the purposes of burial shall be deemed sufficient evidence of title.

for injuring tombs, &c. 1841, 114, § 8. 1855, 257, § 8. 2 Allen, 512. 7 Allen, 299. 100 Mass. 181.

Proof of title.

## TITLE IX.

### CHAPTER 29.

#### OF THE PUBLIC RECORDS.

##### SECTION

1. Linen paper to be used for records. American manufacture to be preferred.
2. County commissioners, &c., to have records bound and papers filed.
3. to provide fire-proof rooms, &c., for records, &c.
4. City governments and selectmen to provide fire-proof safes, &c.
5. Town may cause its records of grants, &c., to be transcribed.
6. or those of town from which set off.
7. Records becoming illegible, &c., may be transcribed; and records of other places.

##### SECTION

8. Transcripts compared and certified, &c., to have force of originals.
9. Records not to be removed, except, &c.
10. may be inspected and copied. Clerks, &c., to certify.
11. Town or city clerk to have custody of records, &c., after dissolution of proprietary.
12. of records of dissolved church or religious society.
13. Penalties.

SECTION 1. All matters of public record in any office shall be entered or recorded on paper made wholly of linen, of a firm texture, well sized, and well finished; and the clerks and registers of said offices shall give a preference to linen paper of American or domestic manufacture, if such paper is marked in water line with the word "linen," and also with the name of the manufacturer.

Linen paper to be used for records. American manufacture to be preferred. R. S. 14, § 116.

SECT. 2. The county commissioners, city governments, and selectmen, of the respective counties, cities, and towns, shall have all books of public record or registry belonging thereto substantially bound, and other papers and documents within their respective departments duly filed and arranged conveniently for examination and reference, and shall also cause such of said public records as are left incomplete by any clerk or register to be made up and completed by his successor from the

County commissioners, &c., to have records bound and papers filed. 1861, 161, § 1.

files and usual memoranda as far as practicable, and certified and preserved in the same manner and with the same effect as is provided for other cases in sections seven, eight, and ten, of this chapter.

County commissioners, &c., to provide fire-proof rooms, &c., for records, &c.  
R. S. 14, § 104.  
1861, 161, §§ 1, 2.

SECT. 3. The commissioners shall provide and maintain fire-proof rooms with suitable alcoves, cases, and boxes, for the safe keeping of all records, files, papers, and documents, belonging to the several registries of deeds; and a suitable place for the safe keeping and preservation of the other public records, and of valuable documents belonging to the county; and for their particular security and preservation; and such records and documents shall be securely kept in the places so provided.

City governments and selectmen to provide fire-proof safe, &c.  
1867, 97, § 1.

SECT. 4. City governments and selectmen shall provide at the expense of their respective cities and towns, fire-proof safes of ample size for the preservation of books of record or registry, and other important documents or papers belonging thereto; and the clerk of each city and town shall keep all such books, papers, and documents, in the safe so provided, at all times except when they are wanted for use.

Town may cause its records of grants, &c., to be transcribed;  
1867, 84, § 1.

SECT. 5. A city or town may cause to be carefully transcribed such of its records as relate to grants of lands, or the grants or divisions and allotments of land made by the original proprietors of the township, or to any easements, private rights, or ways, or any records of births and marriages kept by such city or town, or by any parish within the same.

or those of town from which set off.  
1867, 84, § 2.

SECT. 6. A city or town whose territory in whole or in part has been set off from any other city or town, may cause to be carefully transcribed such records named in the preceding section as relate to lands, easements, rights, or ways, situated in the territory so set off.

Records becoming illegible, &c., may be transcribed; and records of other places.  
1861, 161, §§ 2, 6.  
See § 2.  
See 1867, 265.

SECT. 7. When the records of a county, city, or town, are becoming worn, mutilated, or illegible, the county commissioners, city government, or selectmen, shall have fair legible copies seasonably made; and when the interests of any county, city, or town, require, the county commissioners, mayor and aldermen, selectmen, or overseers of the poor, may have copies of any records or parts of records, or of any papers or documents, in the legal custody of any other county, city, or town, so made at the expense of their respective counties, cities, or towns; which copies shall be certified by the register or clerk of the office where they are taken to be true copies of the originals, and they shall be preserved in like manner as the original records, papers, and documents, of the place for which they are made.

Transcripts compared and certified, &c., to have force of originals.  
1861, 161, § 2.  
1867, 84, §§ 1, 2.  
See § 2.

SECT. 8. A transcript made in pursuance of the provisions of the preceding sections, and compared and certified under oath by the clerk or register having the custody of the original to be a true copy, shall have the same force and effect when deposited among the records of the place for which it is made as if the same were an original record, or an original paper, or document, deposited there.

Records not to be removed, except, &c.;  
R. S. 83, § 22.  
1849, 202, § 1.  
1861, 161, § 3.  
1862, 10.  
1866, 294, § 13.  
See § 13.

SECT. 9. Registers of deeds, registers of courts, and the registers and clerks of courts, cities, and towns, shall keep all records and documents belonging to their offices in their sole custody, and shall in no case, except upon summons in due form of law, or when the temporary removal of records and documents in their custody is necessary or convenient for the transaction of the business of the courts or the performance of the duties of their respective offices, cause or permit any record or document to be removed or taken away.

may be inspected and copied. Clerks, &c., to certify.  
1861, 161, §§ 4, 6.  
1867, 84, § 3.  
See § 2.

SECT. 10. Under the direction of the officers having the custody of the county, city, and town records and files, the same shall be open for public inspection and examination, and any person may take copies thereof. And the several clerks and registers shall, on payment of a reasonable fee therefor, compare and certify, in the manner herein mentioned, all transcripts properly and correctly made for any county, city, or town, in pursuance of the provisions of this chapter.

SECT. 11. The legal custody of the books of record and other docu-

ments of the ancient proprietors of townships or of common lands, when they have ceased to be a body corporate, shall, unless they have made other legal disposition thereof, be vested in the clerk of the city or town in which such lands or the larger portion of them are situated; who, if such records and documents are in the possession of any other person, shall demand the same, and may make and certify copies thereof in the same manner as the clerk of the proprietors might have done.

SECT. 12. When any church or religious society ceases to have a legal existence, and the care of its records and registries is not otherwise provided for by law, the person having possession of the same shall deliver them to the clerk of the city or town in which such church or society was situated, who may certify copies thereof.

SECT. 13. Every county, city, and town, for each month it neglects or refuses to perform any duty required by this chapter, shall forfeit twenty dollars; a register or clerk who neglects or refuses to perform any duty required of him shall forfeit for each offence ten dollars; whoever takes and carries away any book of record, paper, or written document, belonging to the records or files of any county, city, or town, except as is provided in section nine, or defaces, alters, or mutilates, by mark, erasure, cutting, or otherwise, any such record, paper, or written document, shall forfeit a sum not exceeding fifty dollars; and whoever, after demand made by the clerk of the city or town entitled by law to have possession of the books of record and other documents mentioned in sections eleven and twelve, wrongfully detains the same, shall forfeit fifty dollars.

Town or city clerk to have custody of records when, &c.; R. S. 48, § 17. 1861, 161, § 5. See § 13.

of records of church ceasing to exist. 1861, 161, § 8. See § 13.

Penalties. 1861, 161, §§ 4, 5, 7, 8. 1867, 97, § 2.

## TITLE X.

### OF PARISHES AND RELIGIOUS SOCIETIES; AND OF RELIGIOUS, CHARITABLE, AND EDUCATIONAL FUNDS AND ASSOCIATIONS.

CHAPTER 30. — Of Parishes and Religious Societies.

CHAPTER 31. — Of Donations and Conveyances for Pious and Charitable Uses.

CHAPTER 32. — Of Associations for Religious, Charitable, and Educational Purposes.

CHAPTER 33. — Of Public Libraries.

## CHAPTER 30.

### OF PARISHES AND RELIGIOUS SOCIETIES.

#### SECTION

1. Religious societies to be bodies corporate. Powers of taxation conferred by special act not affected. Existing rights of property not impaired.
2. Rights, &c., of religious societies.
3. Churches to have accustomed privileges, &c.
4. Societies may organize themselves, &c. Powers, &c. Subject to revocation
5. First meeting to be called by justice's war-

#### SECTION

- rant. Contents of warrant and proceedings thereon.
6. Membership of religious societies to be voluntary.
7. Societies may regulate admissions by by-laws.
8. Members alone may vote.
9. Annual meeting in March or April, or at times prescribed by by-laws, &c. Choice of officers.

## SECTION

10. Moderator, &c., elected by ballot. Clerks, &c., to be sworn. Other elections.
11. Prudential affairs, by whom managed.
12. If assessors refuse, &c., a justice of the peace may call, &c.
13. Warrant to contain matters desired by five or more voters. Action on matters not in warrant void.
14. Meetings, how warned.
15. Who to preside till moderator is chosen. Choice of clerk. Officers, how sworn.
16. Moderator's powers, &c. Penalties for disorderly conduct.
17. Collector to be sworn. If not present, to be summoned. Upon refusal or neglect, new election.
18. Vacancies in offices, how filled.
19. Officers of Protestant Episcopal Societies.
20. Objects for which a society may raise money.
21. Taxes to be assessed on property.
22. Corporations not to be taxed, nor trustees, &c.
23. Societies may appoint treasurers collectors, who shall have power of town collectors; may abate upon prompt payment.
24. Unincorporated societies may hold, &c., donations.
25. Trustees may be appointed; term of office, regulations for their government.
26. "Religious society," &c., includes parish.
27. Proprietors of churches, &c., may organize and have corporate powers.
28. Amount of estate which may be held.

## SECTION

29. Clerk to leave copy of record of organization with town clerk, &c., or organization to be void.
30. Proprietors of churches, &c., may assess for alterations, repairs, &c.
31. How proprietors' meetings may be called.
32. Assessment and collection of money.
33. Notice when pews are sold by treasurer.
34. Affidavit of notice of sales made evidence.
35. Proprietors may take down pews to alter churches, &c. Proceedings in such case.
36. Parishes and societies may take down pews or sell their house.
37. No compensation when church is unfit for use.
38. Pews personal estate. Dower, &c.
39. Pews in churches erected since March 25, 1846, may be assessed for support of public worship.
40. and in churches erected before that time, by consent or vote of two-thirds.
41. Pews to be purchased in such case at an appraisal.
42. Societies complying with preceding sections to have powers, &c.
43. Trustees of Methodist Episcopal Societies may organize and become corporations.
44. Powers of trustees. Annual income not to exceed \$4000.
45. First meeting, how called. Organization. Secretary to be sworn.
46. Copy of record of organization to be left with town clerk, or organization to be void.

See 1874, 375  
1875, 49

Religious societies to be bodies corporate; existing powers not affected; R. S. 20, §§ 1, 19, 21.  
18 Allen, 90.

1876, 84  
rights, &c., of.  
R. S. 20, § 2.

Churches to have privileges, &c.  
R. S. 20, § 8.  
16 Mass. 488.  
10 Pick. 172.  
5 Cush. 412.

Societies not incorporated may organize, &c., powers may be revoked.  
R. S. 20, §§ 26, 29.  
6 Met. 448.  
97 Mass. 349.

First meeting, &c., how called.  
R. S. 20, §§ 27, 28.  
6 Met. 448.  
too §§ 13, 31.

SECTION 1. Every religious society established or organized by virtue of any statute shall be and continue a body corporate with the powers given to corporations by chapter sixty-eight, and the powers, privileges, liabilities, and duties, set forth in this chapter; but this chapter shall not enlarge nor diminish the powers of taxation enjoyed by any religious society by virtue of a special law or act of incorporation, nor impair existing rights of property of any territorial parish.

SECT. 2. Religious societies, whether corporate or unincorporated, shall continue to have and enjoy their existing rights, privileges, and immunities, except so far as the same may be limited or modified by the provisions of this chapter.

SECT. 3. The respective churches connected and associated in public worship with such religious societies shall continue to have, exercise, and enjoy, all their accustomed privileges and liberties respecting divine worship, church order, and discipline, and shall be encouraged in the peaceable and regular enjoyment and practice thereof.

SECT. 4. A religious society that is not incorporated, or which may be unable to assemble in the usual manner, if it contains ten or more qualified voters, may organize and become a corporation with the powers, privileges, duties, liabilities, and requirements of such societies, and may hold so much estate, real or personal, as may be necessary for the objects of such organization, and no more; but all the powers derived from such organization may be revoked by the legislature.

SECT. 5. Any justice of the peace for the county in which such society may be, upon application in writing by five or more of the qualified voters thereof, may issue his warrant directed to some one of the applicants, stating the objects, and requiring him to warn the qualified voters of the society to meet at a time and place appointed in the warrant; and the same may be served by posting an attested copy thereof on the principal outer door of the meeting-house, or leaving such copy with or at the last and usual place of abode of such voters, seven days at least

before such meeting; and, upon due return thereof, the same justice or any other justice of the peace for the county may preside at the meeting for the choice and qualification of a clerk, who shall enter at large upon the records of the society the proceedings had in the organization thereof; and the society may thereupon proceed to choose a moderator and do such other things as parishes are by law authorized to do at their annual meetings: *provided* the subject matter thereof is inserted in the warrant.

SECT. 6. Persons belonging to a religious society shall be held to be members until they file with the clerk a written notice declaring the dissolution of their membership, and they shall not be liable for any grant or contract thereafter made or entered into by such society. No person shall be made a member of such society without his consent in writing.

.106 Mass. 473.

SECT. 7. Every religious society may make by-laws not repugnant to the laws of the commonwealth, and therein prescribe the manner in which persons may become members.

SECT. 8. No person shall have a right to vote in the affairs of such society unless he is a member thereof.

SECT. 9. The qualified voters of every parish and incorporated religious society, and of every society organized according to the provisions of this chapter, shall hold an annual meeting in the month of March or April, or at such other time as they may prescribe by their by-laws, and if the by-laws do not otherwise determine at a time and place appointed by their assessors or standing committee; and at such meeting shall choose a moderator, clerk, two or more assessors, a treasurer and collector, and such other officers as they think necessary, all of whom, except the moderator, shall continue in office till the next annual meeting and till others are chosen and qualified in their stead.

SECT. 10. Moderators of meetings held for the choice of officers shall be elected by written ballots. Clerks, assessors, treasurers, and collectors, shall be elected by written ballot and shall be sworn. Other officers may be elected in such mode as the society may determine.

SECT. 11. The prudential affairs of such societies shall be managed by their assessors or a standing committee specially appointed for that purpose; and the assessors or committees shall have like authority for calling meetings as selectmen have for calling town meetings.

SECT. 12. If there are no assessors or committee, or if they unreasonably refuse to call a meeting, any justice of the peace for the county, upon the application of not less than five qualified voters, may call one in the manner provided in section five.

8 Met. 301. 4 Cush. 476. 97 Mass. 249.

SECT. 13. The assessors or committee shall insert in the next warrant they issue for calling a meeting any matter which not less than five qualified voters of the society in writing request. Nothing acted upon shall have any legal operation, unless the subject matter thereof was inserted in the warrant.

SECT. 14. Meetings shall be warned in the manner provided by any by-law or vote of the society, and when no provision is made, in such manner as the assessors or standing committee in their warrant for such meeting direct.

SECT. 15. The clerk, or if there is no clerk or he is absent, the assessors or the standing committee, or any one of them, shall preside in the choice of a moderator; and a clerk may then be chosen, either pro tempore or to fill the vacancy, as the case may require. The moderator may administer the oath of office to the clerk; and the clerk to the assessors and collector; or said oaths may be administered by a justice of the peace; and they shall be substantially the same as are required to be taken by the clerk, assessors, and collectors, of towns.

SECT. 16. The moderator shall have the same power as the modera-

Membership.  
R. S. 20, § 4.  
17 Mass. 347.  
5 Pick. 498.  
13 Pick. 111.  
21 Pick. 148.  
5 Met. 73.  
8 Cush. 267.  
See 1869, 346.

Societies may regulate admissions.  
R. S. 20, § 5.

Who may vote.  
R. S. 20, § 6.

Annual meeting. Choice of officers.  
R. S. 20, § 7.  
1862, 176, § 1.  
1 Cush. 149.  
97 Mass. 349.

Moderator, clerk, &c., how chosen, &c.  
R. S. 20, § 7.  
1838, 46.  
1 Cush. 149.

Prudential affairs, by whom managed.  
R. S. 20, § 14.

When justice may call meeting.  
R. S. 20, § 17.  
8 Pick. 242.  
6 Met. 448.

Warrant, what to contain, &c.  
R. S. 20, § 16.  
9 Pick. 67.

Meetings, how warned.  
R. S. 20, § 8.  
7 Greenl. 428.

Who to preside. Clerk, &c. Officers, how sworn.  
R. S. 20, §§ 9, 10.  
5 Mass. 427.  
6 Greenl. 448.  
See 1836, 100.

Moderator's powers, &c.

Disorderly conduct.  
R. S. 20, § 11.  
16 Mass. 385.

Collector.  
R. S. 20, §§ 12,  
13.

Vacancies in offices, how filled.  
R. S. 20, § 15.  
Officers of Protestant Episcopal Societies.  
1858, 116.

Objects for which a society may raise money.  
R. S. 20, § 18.  
1 Mass. 181.  
6 Mass. 547.  
10 Pick. 500.  
8 Met. 73.  
8 Cush. 267.

Taxes to be assessed on property.  
R. S. 20, § 20.  
1 Cush. 149.  
See 1868, 196.

Corporations, &c., not to be taxed, &c.  
R. S. 20, § 20.  
1848, 164, § 1.  
Societies may appoint treasurers collectors; may abate upon prompt payment.  
R. S. 20, §§ 23, 24.

Unincorporated societies may hold, &c., donations.  
R. S. 20, § 25.  
5 Met. 160.  
8 Met. 154.  
16 Gray, 329.  
6 Allen, 140.  
7 Allen, 190.

tor of a town meeting; and persons guilty of disorderly behavior at a meeting shall be subject to the penalties and punishments provided for like offences in town meetings.

SECT. 17. If the person chosen collector is present and accepts the office, he shall forthwith be sworn. If not present, he shall be summoned to take the oath by a constable or any person whom the clerk or assessors may appoint for the purpose. Upon the refusal or neglect of a person present to accept the office at the time, and upon the neglect of a person so summoned, for the space of seven days, to appear and take the oath, the society shall proceed to a new choice; and so from time to time until some person accepts and is sworn.

SECT. 18. Vacancies in any of the annual offices, occurring after the annual meeting, may be filled at any other legal meeting.

SECT. 19. The rector or one of the wardens of religious societies belonging to the body of christians known as the Protestant Episcopal Church, organized under the laws of the commonwealth, may, unless it is otherwise provided in some by-law, preside at their meetings with all the powers of a moderator; and the wardens or wardens and vestry may exercise all the powers of a standing committee in accordance with the usage and discipline of said church. Unless they assess or collect a tax on the polls, estates, or pews, of the members thereof, such societies need not choose a collector or assessors; and they may in their by-laws provide, that the duties of assessors shall be performed by the wardens. But the officers upon whom the duties of standing committee or assessors may devolve shall in all cases be elected by ballot.

SECT. 20. The qualified voters of each religious society, at the annual meeting or at any other meeting regularly notified seven days at least before the holding thereof, may grant and vote such sums of money as they judge necessary for the settlement, maintenance, and support, of ministers or public teachers of religion; for the building or repairing of houses of public worship; for sacred music; for the purchase and preservation of burial grounds; and for all other necessary parish charges; which sums shall be assessed on the polls and estates of all the members of the society, in the same manner and proportion as town taxes are by law assessed.

SECT. 21. The assessors shall assess the taxes upon the property (not exempted by law from taxation) of all the members of the society, including their real estate within the state, in whatever part thereof it may be situated, and their personal estate wherever the same may be; and no citizen shall be liable to pay a tax for the support of public worship or other parish charges, to a society other than that of which he is a member.

SECT. 22. No corporation shall be taxed for any parochial purpose. Nor shall any person be taxed in a parish or religious society for property held by him as guardian or trustee.

SECT. 23. Every society may appoint its treasurer collector of taxes; who shall have like powers and proceed in like manner, in enforcing the collection of such taxes after the expiration of the time fixed by the society for the payment thereof, as provided in chapter twelve for the collection of taxes by collectors of towns; and any society may authorize its treasurer and collector to make an abatement of such sum as it may agree upon at its annual meeting, to those who make voluntary payment of their taxes within such periods as may be determined by the society.

SECT. 24. Unincorporated religious societies shall have like power to manage, use, and employ, any donation, gift, or grant, made to them, according to its terms and conditions, as incorporated societies have, by law; may elect suitable trustees, agents, or officers therefor; and sue for any right which may vest in them in consequence of such donation, gift, or grant; for which purposes they shall be corporations.



SECT. 25. Incorporated and unincorporated religious societies may appoint trustees, not exceeding five in number, to hold and manage trust funds for their benefit, who shall hold their offices five years and until others are appointed in their stead, with power to fill vacancies for an unexpired term occurring in their board. Such societies at or before the time of the first appointment of the trustees may establish rules and regulations for their government, which shall be considered as of the nature of a contract, and not subject to alteration or amendment except by all the trustees in office at the time and by a two-thirds vote of the society interested therein.

Trustees may be appointed; term of office; regulations for their government. 1868, 889, § 1. See 1869, 248.

SECT. 26. The terms "religious society" and "society" in the preceding sections shall include parishes.

"Religious society," &c., includes parish.

SECT. 27. Persons owning or proposing to build a house of public worship may organize themselves in the same manner as religious societies are authorized to do by the provisions of this chapter; and shall thereupon become a corporation with the powers, privileges, duties, restrictions, and liabilities, set forth in chapter sixty-eight, and in the following sections; but all the powers derived from such organization may be revoked by the legislature.

Proprietors of churches, &c., may organize and have corporate powers. 1840, 62, §§ 1, 2. See § 23.

SECT. 28. Every such corporation may hold so much real and personal estate, in addition to its meeting-house, as may be necessary for its objects, and as has been agreed and determined on at the meeting held for the purpose of organization; and the annual income thereof shall be applied to parochial purposes.

Amount of estate which may be held. 1840, 62, § 3. See 1870, 67.

SECT. 29. The clerk of every such corporation shall, within ten days of such meeting, leave with the clerk of the town or city in which such house of worship is situated, or is about to be built, a true copy of the record of the proceedings. If he fails so to do, the organization shall be void. The copy shall be recorded by the clerk receiving it in a book kept for the purpose, for which he shall receive the fee of the register of deeds for like services.

Clerk to leave copy of record with town clerk, &c. 1840, 62, § 4.

SECT. 30. When the proprietors deem it expedient to alter, enlarge, repair, rebuild, or remove, their house, or build a new one, they may, at a legal meeting called for that purpose, raise such sums of money as they may judge necessary for the purpose, and to purchase land necessary therefor.

Proprietors may assess for alterations, repairs, &c. R. S. 20, § 81. 1876 c. 84

SECT. 31. A meeting of the proprietors for any of the purposes aforesaid, may be called in the manner prescribed in the by-laws or votes of the corporation, or by a warrant granted by a justice of the peace on application in writing by any five of said proprietors, which warrant shall be directed to one of the applicants; or such meeting may be called by a notification by the clerk of the proprietors, who shall warn a meeting on a like application to him; and in either case the meeting may be warned by notification served as provided in section five.

How proprietors' meetings may be called. R. S. 20, § 36. 8 Met. 801. 9 Cush. 508. 18 Allen, 90.

SECT. 32. Money raised may be assessed on the pews in such house, and the assessment may be committed to the treasurer of the proprietors, who shall forthwith give notice by posting up an advertisement at the principal outer door of the house, stating the completion of such assessment and the day of delivery thereof to him; and if any part of said taxes remains unpaid for three months afterwards, the treasurer shall collect the same forthwith by sales at public auction of the pews whereon the same remains unpaid, in the manner provided in the following sections.

Assessment and collection of money. R. S. 20, § 32. See § 39. See 1868, 196.

SECT. 33. The treasurer shall post up a notification of the intended sale of a pew for taxes at the principal outer door of such house, at least three weeks before the time of sale, setting forth the number of the pew, if any, the name of the owner or occupant, if known, and the amount of the tax due thereon; and if any part of said tax remains

Notice when pews are sold by treasurer. R. S. 20, § 33. See § 39. 8 Allen, 369.

unpaid at the time, the treasurer shall sell the pew at public auction to the highest bidder, and shall execute and deliver to the purchaser a sufficient deed of conveyance. The money arising from the sale, beyond the taxes and incidental reasonable charges, shall be paid by the treasurer to the former owner of the pew, or to his assigns.

**Affidavit of notice of sales made evidence.**  
R. S. 20, § 34.

SECT. 34. An affidavit annexed to an original notification or to a copy thereof, made before a justice of the peace, and recorded on the proprietors' records within six months next after such sale, shall be allowed as one mode of proof of the posting up of the notifications herein before required.

**Proprietors may take down pews to alter churches, &c.**  
Proceedings in such case.  
R. S. 20, § 36.  
4 N. Hamp. R. 180.  
13 Allen, 511.

SECT. 35. Such proprietors, for the purpose of building a new house, or of altering, enlarging, repairing, rebuilding, or removing, their house already built, may sell their house or take down any pews therein; the pews taken being first appraised by three or more disinterested persons chosen by the proprietors for that purpose. The pews newly erected shall be sold by their treasurer at public auction to the highest bidder, and deeds thereof given in like manner as when pews are sold for the payment of taxes. The money arising from such sale shall be applied, so far as may be necessary, to paying the appraised value of the pews taken down; and the deficiency, if any, shall be paid by the proprietors of such house, within thirty days after the sale.

**Parishes, &c., may sell house, &c.**  
R. S. 20, § 37.  
1853, 256.  
19 Pick. 361.

SECT. 36. Under the regulations of the preceding section, a parish or religious society, whenever it deems it necessary for the purpose of building a new house or of altering, enlarging, removing, or rebuilding, its house already built, may take down any pews therein or sell the house.

**No compensation in case, &c.**  
R. S. 20, § 38.  
17 Mass. 495.  
1 Pick. 102.  
3 Pick. 344.  
7 Pick. 138.  
9 Cush. 508.  
**Pews personal estate, &c.**  
1855, 122, §§ 1, 2.  
**In certain churches may be assessed, &c.**  
1846, 213, § 1.

SECT. 37. Nothing contained in the two preceding sections shall entitle a person to compensation for a pew so taken down, when such house is unfit for the purposes of public worship.

SECT. 38. Pews shall be personal estate. But this provision shall not affect any existing right of dower.

**In other churches, &c.**  
1852, 319, § 1.  
1854, 258, § 1.  
1 Cush. 149.  
3 Allen, 369.

SECT. 39. Corporations for religious purposes may assess upon the pews in a church or meeting-house which they have erected or procured for public worship since the twenty-fifth day of March eighteen hundred and forty-five, according to a valuation of said pews which shall first be agreed upon and recorded by the clerk, sums of money for the support of public worship and other parochial charges, and for the repairs of the house. Such assessments may be collected in the manner provided in sections thirty-two and thirty-three.

SECT. 40. A corporation which had erected or procured such house prior to the twenty-fifth day of March, eighteen hundred and forty-five, may avail itself of the provisions of the preceding section, if the consent of all the pew owners is obtained, or two-thirds of the members present and voting at a regular meeting called for that purpose so determine.

**to be purchased in certain cases at an appraisal.**  
1854, 258, § 2.

SECT. 41. A religious society which votes to avail itself of the provisions of section thirty-nine, shall, upon the application of a person owning one or more pews in its house, within one year after said vote, purchase the same at the appraised value. Such appraisal shall be made by three disinterested persons who may be chosen, one by the pew owner, one by the society, and the third by the two persons thus chosen.

**Societies complying with preceding sections to have powers, &c.**  
1854, 258, § 3.

SECT. 42. Any religious society complying with the requisitions of the two preceding sections, shall be entitled to the privileges and subject to the liabilities incident to those religious societies which have erected or procured a meeting-house for public worship since the twenty-fifth day of March in the year eighteen hundred and forty-five.

**Trustees of Methodist Episcopal societies may organize and**

SECT. 43. The trustees of any society of the Methodist Episcopal Church, or of the African Methodist Episcopal Church, appointed according to the discipline or usages thereof respectively or as such

society chooses, may organize and become a corporation with powers, privileges, duties, and liabilities, of chapter sixty-eight, subject however to account to the quarterly meeting of such society according to such discipline and usages. But all powers derived from such organization may be revoked by the legislature.

SECT. 44. Such trustees may receive, hold, and manage, all the property, both real and personal, belonging to such society, and sell and convey the same, and hold in trust gifts, grants, bequests, or donations, made to such society for the support of public worship and other religious purposes: *provided*, that the annual income thereof, exclusive of the meeting-house, shall not exceed four thousand dollars.

SECT. 45. The first meeting of such trustees may be called by a justice of the peace upon the application of three or more of the trustees; at which they may choose a secretary and other officers. The provisions of this chapter in relation to the warning and organization of meetings of religious societies shall, so far as the same are applicable, be in force in regard to meetings for the organization of such trustees. The secretary, before entering upon the duties of his office, shall be sworn to the faithful discharge of the same, and a record of such oath shall be kept in the records of their proceedings.

SECT. 46. An attested copy of the record of the proceedings at such organization shall be left with the town or city clerk, and recorded within the time and in the manner prescribed in section twenty-nine. If the secretary omits to leave such copy within the time specified the organization shall be void.

become corporations.  
1847, 280, § 1.  
1857, 48, § 1.  
See § 46.

109 m. 165  
Powers of trustees.  
Annual income not to exceed \$4000.  
1847, 280, § 2.  
1857, 48, § 2.

First meeting, how called. Or organization.  
Secretary to be sworn.  
1847, 280, § 3.

Copy of record of, to be left with town clerk, or organization to be void.  
1847, 280, § 4.

## CHAPTER 31.

### OF DONATIONS AND CONVEYANCES FOR PIOUS AND CHARITABLE USES.

#### SECTION

1. Deacons, church wardens, &c., made bodies corporate to take donations.
2. When ministers, elders, &c., are joined in such donation, they shall be joined in the body corporate.
3. Ministers of all churches may take in succession any parsonage land.
4. No conveyance of church land valid without consent of church, &c.
5. Conveyance by minister to be valid only during his ministry, unless, &c.

#### SECTION

6. Churches, except, &c., may appoint committees to settle with deacons.
7. Income of such bodies corporate limited.
8. Overseers of monthly meetings of Friends or Quakers to hold lands, &c., as a corporation. Income limited.
9. Trustees who hold funds given to towns for charitable, &c., purposes, to report to selectmen.
10. Probate court may remove trustee.

SECTION 1. The deacons, church wardens, or other similar officers, of all churches or religious societies, if citizens of this commonwealth, shall be deemed bodies corporate, for the purpose of taking and holding in succession all grants and donations, whether of real or personal estate, made either to them and their successors, or to their respective churches, or to the poor of their churches.

SECT. 2. When the ministers, elders, or vestry, of a church are, in the grants or donations mentioned in the preceding section, joined with such deacons or church wardens as donees or grantees, such officers and their successors, together with the deacons or church wardens, shall be deemed the corporation for the purposes of such grants and donations.

SECT. 3. The minister of every church or religious society of whatever denomination, if a citizen of this commonwealth, shall be capable of taking in succession any parsonage land granted to the minister and his successors, or to the use of the ministers, or granted by any words of

Deacons, &c., bodies corporate, &c.  
R. S. 20, § 29.  
12 Mass. 549.  
12 Met. 250.  
4 Cush. 281.  
9 Cush. 181.

Ministers, &c., in certain cases to be joined in body corporate.  
R. S. 20, § 40.  
12 Met. 250.  
4 Cush. 281.

Ministers may take in succession, &c.  
R. S. 20, § 41.  
10 Mass. 93.

15 Mass. 464.  
6 Greenl. 355.

Conveyance of  
church lands,  
when not valid.  
R. S. 20, § 42.

by minister,  
when to be valid.  
R. S. 20, § 43.  
2 Mass. 500.  
14 Mass. 333.

Committees  
to settle with  
deacons.  
R. S. 20, § 44.  
9 Cush. 153.

Income of such  
bodies corporate  
limited.  
R. S. 20, § 45.

Overseers of  
monthly meet-  
ings of Friends or  
Quakers, to hold  
lands, &c., as a  
corporation.  
Income limited.  
R. S. 20, § 46.  
8 Cush. 481.  
7 Allen, 243.

Trustees who  
hold funds given  
to towns for  
charitable, &c.,  
purposes, to re-  
port to select-  
men.  
1855, 302, § 1.  
1884, 239.  
1865, 271.  
1866, 75.

Probate court  
may remove  
trustee.  
1855, 302, § 2.

like import; and may prosecute and defend in all actions touching the same.

SECT. 4. No conveyance of the lands of a church shall be effectual to pass the same, if made by the deacons without the consent of the church, or of a committee of the church appointed for that purpose, or if made by the church wardens without the consent of the vestry.

SECT. 5. No conveyance by a minister of lands held by him in succession, shall be valid any longer than he continues to be such minister, unless such conveyance is made with the consent of the town, parish, or religious society, of which he is minister, or unless he is the minister of an episcopal church and makes the conveyance with the consent of the vestry.

SECT. 6. The several churches, other than those of the episcopal denomination, may choose committees for the purpose of settling the accounts of the deacons and other church officers, and, if necessary, to commence and prosecute suits in the name of the church against the deacons or other officers touching the same.

SECT. 7. The income of such grant or donation made to or for the use of a church, shall not exceed the sum of two thousand dollars a year, exclusive of the income of any parsonage lands granted to or for the use of the ministry.

SECT. 8. The overseers of each monthly meeting of the people called Friends or Quakers shall be a body corporate for the purpose of taking and holding in succession grants and donations of real or personal estate made to the use of such meeting, or to the use of any preparative meeting belonging thereto; and may aliene or manage such estate according to the terms and conditions of the grants and donations, and prosecute and defend in any action touching the same: *provided*, that the income of the grants and donations to any one of such meetings for the uses aforesaid shall not exceed the sum of five thousand dollars a year.

SECT. 9. All trustees, whether incorporated or not, who hold funds given or bequeathed to a city or town for any charitable, religious, or educational purpose, shall make an annual exhibit of the condition of such funds to the board of aldermen of the city, or the selectmen of the town, to which such funds have been given or bequeathed, and all transactions by the trustees concerning such funds shall be open to inspection by the board of aldermen of the city, or selectmen of the town, to which the returns are made.

SECT. 10. The probate court for the county in which the city or town is situated to which funds have been given or bequeathed as aforesaid, may on the petition of five persons cite all parties interested to appear before the court to answer all complaints which may then and there be made; and if a trustee has neglected or refused to render such annual exhibit, or is incapable of discharging the trust reposed, or unsuitable to manage the affairs of the same, the court may remove such trustee and supply the vacancy.

1874  
177

~~1874, 150~~

# CHAPTER 32.

*Literary, benevolent, scientific, medical*

## OF ASSOCIATIONS FOR RELIGIOUS, CHARITABLE, AND EDUCATIONAL PURPOSES.

[See 1867, 248; 1869, 276, 846.]

1873 c. 176

S. 1874. 375

### SECTION

1. Seven or more persons associating for religious, &c., purposes, to be body corporate.
2. Purpose and location of corporation to be specified in articles of association.
3. To have usual corporate powers, &c.

### SECTION

4. May hold estate not more than \$100,000.
5. Estate not exempt from taxation where dividends are made, or estate is used for other purposes.

SECTION 1. Seven or more persons within this state, having associated themselves by agreement in writing for educational, charitable, or religious purposes, under any name by them assumed, and complying with the provisions of this chapter, shall with their successors be and remain a body politic and corporate.

Seven or more persons associating, &c., to be body corporate. 1867, 56, § 1. See 1869, 276, 846.

SECT. 2. The purpose of such corporation and the place within which it is established or located shall be distinctly specified in its articles of association; which articles, and all amendments thereto, shall be recorded in the office of the register of deeds for the county or district wherein such place is situated; and such corporation shall appropriate its funds to no other purpose.

Purpose and location to be specified in articles. 1867, 56, § 2.

SECT. 3. Corporations organized under this chapter shall have the powers and privileges, and be subject to the duties, liabilities, and restrictions, set forth in chapter sixty-eight, so far as the same may be applicable.

To have usual corporate powers, &c. 1867, 56, § 3.

SECT. 4. Such corporations may hold real and personal estate necessary for the purposes of their organization, to an amount not exceeding one hundred thousand dollars.

May hold estate not over, &c. 1867, 56, § 4.

SECT. 5. Their estate shall not be exempted from taxation in any case where part of the income or profits of their business is divided among members or stockholders, or where any portion of such estate is used or appropriated for other than educational, charitable, or religious purposes.

Estate not exempt from taxation, where used for other purposes. 1867, 53, § 5. See 1869, 276.

# CHAPTER 33.

## OF PUBLIC LIBRARIES.

### LAW LIBRARIES.

#### SECTION

1. Law libraries heretofore organized, to exist under this chapter.
2. Attorneys may organize a Law Library Association in any county where none exists.
3. First meeting, how called.
4. Officers.
5. Inhabitants of county may use the books under prescribed regulations.
6. County treasurer to disburse, not exceeding, &c., to enlarge such libraries.
7. Treasurer to give bond and make return under oath.

### TOWNS AND CITY LIBRARIES.

#### SECTION

8. Towns and cities may establish libraries.
9. may appropriate money, and receive devices, bequests and donations, for that purpose.

### SOCIAL LIBRARIES.

10. Proprietors of library may constitute themselves a corporation, &c.
11. Warning meeting, choice of officers, &c.
12. Treasurer to give bond.
13. Assessments.

### LAW LIBRARIES.

[See 1871, 387.]

SECTION 1. Law library associations heretofore organized in any county except Suffolk, shall remain corporations in the same manner as if organized under this chapter.

Law libraries. 1842, 94, § 1. 1844, 157, § 1.

Law Library Associations, where may be organized.  
1866, 184.  
1869, 196.

First meeting, how called.  
1842, 94, § 2.  
1866, 184.  
1869, 196.

Officers.  
1842, 94, § 1.

Inhabitants of county may use books, &c.  
1842, 94, § 2.

County treasurer to pay, not exceeding, &c., for such libraries.  
1866, 71, § 1.  
1869, 173.

See 1863, 215.

1874, 156

Treasurer to give bond, &c.  
1866, 71, § 2.

SECT. 2. The attorneys at law admitted to practice in the courts of the commonwealth and resident in a county for which there is no law library association, may organize themselves by the name of the Law Library Association for such county; and when so organized shall be a corporation for the purpose of holding and managing the law library belonging to the county, and may adopt by-laws for that purpose, subject to the approval of the justices of the superior court.

SECT. 3. The clerk of the courts in any county in which no association has been organized, upon the application of seven attorneys at law resident therein, may call a meeting for the purpose of such organization by posting up notifications thereof in some convenient place in any court-house of the county; which meeting shall be holden during the term of the superior court commencing next after ten days from the time of posting up such notification. The clerk shall preside at such meeting until a clerk of the association is chosen.

SECT. 4. The officers of such association shall be a clerk, treasurer, and librarian, whose duties shall be defined by the by-laws.

SECT. 5. Every inhabitant of a county in which such association is organized may use the books in the library, subject to such regulations as may be prescribed by the association with the approval of the superior court.

SECT. 6. County treasurers shall annually, on the first day of January, pay to the county law library associations in their respective counties one-quarter part, not exceeding one thousand dollars, of all sums which said treasurers have received from the clerks of the courts during the preceding year; and they may also pay such further sums, not exceeding the amount paid into the respective county treasuries by the clerks of the courts, as the county commissioners deem necessary and proper. All sums so paid shall be applied to maintain and enlarge such libraries for the use of the courts and citizens.

SECT. 7. The treasurer of a law library association, before receiving said money, shall give a bond with sureties to the satisfaction of the commissioners for the faithful application thereof, and that he will make a return annually to them, under oath, of the manner in which all such applications are made.

#### TOWN AND CITY LIBRARIES.

[See 1866, 222; 1871, 26.]

Towns and cities may establish libraries  
1861, 806, § 1.

SECT. 8. Each town and city may establish and maintain a public library therein, with or without branches, for the use of the inhabitants thereof, and provide suitable rooms therefor, under such regulations for its government as may from time to time be prescribed by the inhabitants of the town, or the city council.

may appropriate money and receive devise, &c., for that purpose.  
1851, 305, §§ 2, 3.  
1859, 26.  
10 Allen, 169.  
(R.) *Repeal and substitute*.  
1866, 222.

1873, 306

SECT. 9. (R.) [Any town or city may appropriate money for suitable buildings or rooms, and for the foundation of such library a sum not exceeding one dollar for each of its ratable polls in the year next preceding that in which such appropriation is made; may also appropriate annually, for the maintenance and increase thereof, a sum not exceeding fifty cents for each of its ratable polls in the year next preceding that in which such appropriation is made, and may receive, hold, and manage, any devise, bequest, or donation, for the establishment, increase, or maintenance, of a public library within the same.]

#### SOCIAL LIBRARIES.

[Public library corporations. See 1872, 217.]

Proprietors of library may be a corporation, &c.  
R.S. 41, §§ 1, 3, 6.

SECT. 10. Seven or more proprietors of a library may form themselves into a corporation, under such corporate name as they may adopt, for the purpose of preserving, enlarging, and using, such library; with the powers, privileges, duties, and liabilities, of corporations organized

according to the provisions of chapter sixty-eight, so far as the same may be applicable, and may hold real and personal estate to an amount not exceeding five thousand dollars in addition to the value of their books.

SECT. 11. Upon application of five or more of such proprietors, a justice of the peace may issue his warrant to one of them, directing him to call a meeting of the proprietors, at the time and place and for the purposes expressed in the warrant. The meeting shall be called by posting up the substance of the warrant in some public place in the town where the library is kept, seven days at least before the time of the meeting; at which, if not less than seven of the proprietors meet, they may choose a president, a clerk who shall be sworn, a librarian, collector, treasurer, and such other officers as they may deem necessary; and may determine upon the mode of calling future meetings.

SECT. 12. The treasurer shall give bond with sufficient sureties, to the satisfaction of the proprietors, for the faithful discharge of his duties.

SECT. 13. Such proprietors may, by assessments on the several shares, raise such money as they judge necessary for the purposes of preserving, enlarging, and using, the library.

Warning meeting, choice of officers, &c.  
R. S. 41, §§ 1, 2.

Treasurer to give bond.  
R. S. 41, § 4.  
Assessments.  
R. S. 41, § 6.

## TITLE XI.

### OF PUBLIC INSTRUCTION AND REGULATIONS RESPECTING CHILDREN.

CHAPTER 34. — Of the Board of Education.

CHAPTER 35. — Of Teachers' Institutes and Associations.

CHAPTER 36. — Of the School Funds.

CHAPTER 37. — Of State Scholarships.

CHAPTER 38. — Of the Public Schools.

CHAPTER 39. — Of School Districts.

CHAPTER 40. — Of School Registers and Returns.

CHAPTER 41. — Of the Attendance of Children in the Schools.

CHAPTER 42. — Of the Employment of Children and Regulations respecting them.

## CHAPTER 34.

[See 1867, 123; 1870, 106.]

### OF THE BOARD OF EDUCATION.

#### SECTION

1. Board of education, how organized; term of office; vacancies.
2. may take grants, devices, &c., in trust for educational purposes; to pay all moneys to treasurer.
3. shall prescribe form of school registers, and of blanks for returns; transmit ab-

#### SECTION

1. extracts of returns, and report, to legislature.
4. may appoint secretary, who shall make abstracts, collect and diffuse information, &c.
5. Secretary shall suggest improvements, visit different places, collect books, receive reports, &c.

## SECTION

6. Secretary shall give notice and attend meetings, and collect information, &c.
7. shall send blank forms and reports to clerks of towns and cities.
8. Compensation of secretary, and expenses of office.

## SECTION

9. Board may appoint agents to make inquiry, &c.
10. Expenses of board, how paid.
11. Assistant state librarian may act as clerk.

Board of education, how organized; term of members; vacancies; 1837, 241, § 1.

may take grants, &c., in trust for educational purposes, &c. Duty of treasurer; 1850, 88.

shall prescribe form of school registers and blanks for returns, &c. 1837, 241, §§ 2, 8. 1838, 105, §§ 6-7. 1840, 223, § 3. 1849, 209.

may appoint secretary, who shall make abstracts, &c. 1837, 241, § 2. 1847, 183, § 1. 1849, 215, § 1.

Secretary shall suggest improvements, &c.; 1849, 215, § 1. 1858, 61.

shall give notice and attend meetings, &c. 1838, 159, § 1. 1842, 42.

SECTION 1. The board of education shall consist of the governor and lieutenant-governor, and eight persons appointed by the governor with the advice and consent of the council, each to hold office eight years from the time of his appointment, one retiring each year in the order of appointment; and the governor, with the advice and consent of the council, shall fill all vacancies in the board which may occur from death, resignation, or otherwise.

SECT. 2. The board may take and hold to it and its successors, in trust for the commonwealth, any grant or devise of lands, and any donation or bequest of money or other personal property, made to it for educational purposes; and shall forthwith pay over to the treasurer of the commonwealth, for safe keeping and investment, all money and other personal property so received. The treasurer shall from time to time invest all such money in the name of the commonwealth, and shall pay to the board, on the warrant of the governor, the income or principal thereof, as it shall from time to time require; but no disposition shall be made of any devise, donation, or bequest, inconsistent with the conditions or terms thereof. For the faithful management of all property so received by the treasurer he shall be responsible upon his bond to the commonwealth, as for other funds received by him in his official capacity.

SECT. 3. The board shall prescribe the form of registers to be kept in the schools, and the form of the blanks and inquiries for the returns to be made by school committees; shall annually on or before the third Wednesday of January lay before the legislature an annual report containing a printed abstract of said returns, and a detailed report of all the doings of the board, with such observations upon the condition and efficiency of the system of popular education, and such suggestions as to the most practicable means of improving and extending it, as the experience and reflection of the board dictate.

SECT. 4. The board may appoint its own secretary, who, under its direction, shall make the abstract of school returns required by section three; collect information respecting the condition and efficiency of the public schools and other means of popular education; and diffuse as widely as possible throughout the commonwealth information of the best system of studies and method of instruction for the young, that the best education which public schools can be made to impart may be secured to all children who depend upon them for instruction.

SECT. 5. The secretary shall suggest to the board and to the legislature, improvements in the present system of public schools; visit, as often as his other duties will permit, different parts of the commonwealth for the purpose of arousing and guiding public sentiment in relation to the practical interests of education; collect in his office such school-books, apparatus, maps, and charts, as can be obtained without expense to the commonwealth; receive and arrange in his office the reports and returns of the school committees; and receive, preserve, or distribute, the state documents in relation to the public school system.

SECT. 6. He shall, under the direction of the board, give sufficient notice of, and attend such meetings of teachers of public schools, members of the school committees of the several towns, and friends of education generally in any county, as may voluntarily assemble at the time and place designated by the board; and shall at such meetings devote himself to the object of collecting information of the condition of the



public schools of such county, of the fulfilment of the duties of their office by members of the school committees of all the towns and cities, and of the circumstances of the several school districts in regard to teachers, pupils, books, apparatus, and methods of education, to enable him to furnish all information desired for the report of the board required in section three.

SECT. 7. He shall send the blank forms of inquiry, the school registers, the annual report of the board, and his own annual report, to the clerks of the several towns and cities as soon as may be after they are ready for distribution.

Secretary shall send forms and reports to town clerks, &c.  
1850, 41.

SECT. 8. He shall receive from the treasury, in quarterly payments an annual salary of two thousand dollars, and his necessary travelling expenses incurred in the performance of his official duties after they have been audited and approved by the board; and all postages and other necessary expenses arising in his office, shall be paid out of the treasury in the same manner as those of the different departments of the government.

Compensation of secretary, and expenses of office.  
1849, 215, §§ 2, 3.  
1853, 49.  
See 1867, 276.  
**1876 c. 110**

SECT. 9. The board may appoint one or more suitable agents to visit the several towns and cities for the purpose of inquiring into the condition of the schools, conferring with teachers and committees, lecturing upon subjects connected with education, and in general of giving and receiving information upon subjects connected with education, in the same manner as the secretary might do if he were present.

Board may appoint agents to make inquiry, &c.  
Resolves, 1867, 22.  
See 1862, 212.

SECT. 10. The incidental expenses of the board, and the expenses of the members thereof incurred in the discharge of their official duties, shall be paid out of the treasury, their accounts being first audited and allowed.

Expenses of board, how paid.  
1833, 55.

SECT. 11. The assistant librarian of the state library shall act when necessary as clerk of the board.

Clerk.  
1849, 155, § 1.

## CHAPTER 35.

### OF TEACHERS' INSTITUTES AND ASSOCIATIONS.

SECT.

1. Board of education to arrange for meeting of teachers' institutes.
2. Expenses of meetings, how paid.
3. Board to regulate length of session and expense.

SECTION

4. When meetings held, county associations to receive \$50 a year.
5. To be paid on certificate, &c.

SECTION 1. When the board of education is satisfied that fifty teachers of public schools desire to unite in forming a teachers' institute, it shall, by a committee of its body, or by its secretary, or in case of his inability by such person as it may delegate, appoint and give notice of a time and place for such meeting, and make suitable arrangements therefor.

Teachers' institutes, meetings of:  
1846, 99, § 1.  
1848, 10.  
1849, 62.

SECT. 2. To defray the necessary expenses and charges, and procure teachers and lecturers for such institutes, the governor may draw his warrant upon the treasurer for a sum not exceeding three thousand dollars per annum, to be taken from that portion of the income of the school fund not apportioned for distribution to the several cities and towns for the support of public schools.

expenses of, how paid:  
1846, 99, §§ 2, 3.  
1854, 300, §§ 3, 4.  
Resolves, 1850, 65.

SECT. 3. The board may determine the length of time during which a teachers' institute shall remain in session, and what portion, not exceeding three hundred and fifty dollars, of the sum provided for in the preceding section shall be appropriated to meet the expenses of any

length of, and expense.  
1846, 99, § 2.  
1849, 62.  
1852, 218.

*four-*  
**1873 c. 292**

such institute; and the board, its secretary, or any person by it duly appointed, may draw upon the treasurer therefor.

When meetings held, county associations to receive \$50 a year. 1848, 301, § 1.  
(R.) *Repeal and substitute.* 1864, 58.  
To be paid on certificate, &c. 1848, 301, § 2.  
(R.) *Repeal and substitute.* 1864, 58.

SECT. 4. (R.) [When a county association of teachers and others holds semi-annual meetings, of not less than two days each, for the express purpose of promoting the interests of public schools, it shall receive fifty dollars a year from the commonwealth.]

SECT. 5. (R.) [Upon the certificate under oath of the president and secretary of such association to the governor that two semi-annual meetings have been held in accordance with the provisions of the preceding section, he shall draw his warrant in favor of such association for the sum aforesaid.]

## CHAPTER 36.

### OF THE SCHOOL FUNDS.

#### MASSACHUSETTS SCHOOL FUND.

##### SECTION

1. School fund, how invested. Income only to be used.
2. Half the income to be distributed for support of common schools. Appropriations for other educational purposes to be paid from other half. Surplus to be added to principal.
3. apportioned for schools by secretary and treasurer. When towns are not entitled to share.

##### SECTION

4. Income received by towns to be applied for support of schools therein.
- 5 Appropriations for Indians. Account to be rendered.

#### INDIAN SCHOOL FUND.

6. Indian school fund, how applied, &c.

#### TODD NORMAL SCHOOL FUND.

7. Todd fund, how applied.

#### MASSACHUSETTS SCHOOL FUND.

[See 1862, 83; 1866, 58.]

1874, 348

School fund, how invested. Income only to be used.  
R. S. 11, §§ 13, 14.  
1864, 300, §§ 2, 3, 4.  
1864, 323.

SECTION 1. The present school fund of this commonwealth, together with such additions as may be made thereto, shall constitute a permanent fund, to be invested by the treasurer with the approbation of the governor and council, and called the "Massachusetts School Fund": the principal of which shall not be diminished, and the income of which, including the interest on notes and bonds taken for sales of Maine lands and belonging to said fund, shall be appropriated as hereinafter provided.

Income, how distributed:  
1864, 300, §§ 2, 3.  
1868, 96, § 2.  
See 1866, 142.  
1866, 203.  
1869, 168.  
1870, 45.

SECT. 2. One-half of the annual income of said fund shall be apportioned and distributed for the support of public schools without a specific appropriation. All money appropriated for other educational purposes, unless otherwise provided by the act appropriating the same, shall be paid from the other half of said income so long as it shall be sufficient for that purpose. If insufficient, the excess of such appropriations in any year shall be paid from any money in the treasury not otherwise appropriated. If the income in any year exceeds such appropriations for the year, the surplus shall be added to the principal of said fund.

how apportioned for schools.  
When towns are not entitled to share.  
R. S. 23, §§ 66, 67.  
1846, 223, § 5.  
1849, 117, §§ 2, 3.  
See 1867, 98.

SECT. 3. The income of the school fund appropriated by the preceding section to the support of public schools, which may have accrued upon the first day of June of each year, shall be apportioned by the secretary and treasurer, and on the tenth day of July be paid over by the treasurer to the treasurers of the several towns and cities for the use of the public schools, according to the number of persons therein between the ages of five and fifteen years, ascertained and certified as provided in sections three and four of chapter forty. But no such apportionment shall be made to a town or city which has not complied with the provisions of sections five and six of said chapter, or which has not raised by taxation for the support of schools during the school year embraced in the last annual returns, including only wages and board of

teachers, fuel for the schools, and care of fires and school-rooms, a sum not less than one dollar and fifty cents for each person between the ages of five and fifteen years belonging to said town or city on the first day of May of said school year.

SECT. 4. The income of the school fund received by the several cities and towns shall be applied by the school committees thereof to the support of the public schools therein, but said committees may, if they see fit, appropriate therefrom any sum, not exceeding twenty-five per cent. of the same, to the purchase of books of reference, maps, and apparatus for the use of said schools.

SECT. 5. (R.) [On the first day of January annually, there shall be paid out of the income of said school fund as follows, viz.: One hundred dollars to the treasurer of the Marshpee Indians, to be applied under his direction to the support of public schools among said Indians; one hundred and sixty-five dollars to the selectmen of the district of Marshpee, under the provisions of chapter thirty-five of the Resolves of the year one thousand eight hundred and fifty-five; sixty dollars to the trustee of the Gay Head Indians; sixty dollars to the guardian of the Indians of Christiantown and Chippequiddic; and twenty dollars to the treasurer of the Herring Pond Indians; to be applied by them in like manner to the support of public schools among said Indians; and an annual account of the appropriations of said money shall be rendered to the governor and council.]

Income received by towns, how applied.

Appropriations for Indians.

Account to be rendered.  
R. S. 23, § 68.  
1838, 154.  
1863, 136, §§ 1, 2.  
Resolves, 1356, 35.  
[Marshpee made a town by.  
1870, 238.]  
(R.) Repeal and substitute.  
1870, 350.

#### INDIAN SCHOOL FUND.

SECT. 6. (R.) [The income of the school fund for Indians, derived from the surplus revenue of the United States, shall be paid annually in the month of March for public school purposes as follows, viz.: to the treasurer of the district of Marshpee, sixty dollars; to the guardian of the Christiantown and Chippequiddic Indians, seventy-two dollars, one-half thereof for the benefit of said Christiantown and Chippequiddic Indians, and the other half for the benefit of the Gay Head Indians; and to the treasurer of the Herring Pond Indians, eighteen dollars.]

Indian school fund, how applied, &c.  
1837, 85, § 7.  
1862, 83.  
(R.) Repeal and substitute.  
1870, 350.

#### TODD NORMAL SCHOOL FUND.

SECT. 7. The income of the Todd fund shall be paid by the treasurer of the commonwealth on the warrant of the governor to the board of education, to be by them applied to specific objects in connection with the normal schools not provided for by legislative appropriation.

Todd fund, how applied.  
1850, 63, 83.  
1862, 83.

## CHAPTER 37.

[Repealed 1866, 210.]

### OF STATE SCHOLARSHIPS.

#### SECTION

1. Forty-eight scholarships established.
2. Arrangement of sections and classes for scholarships. One scholarship to each section every four years. Secretary of board to notify school committees.
3. School committees to recommend candidates. Qualifications of candidates. Vacancies, how filled.
4. Additional scholars. Character of scholars.

#### SECTION

5. Time and place of selection.
6. Place of education, how selected. Scholars to receive \$100 annually.
7. Vacancies, how filled.
8. Scholars attending normal school, allowance to.
9. Those receiving aid, to teach or refund.
10. Appropriations.

SECTION 1. (R.) [To aid in qualifying principal teachers for the high schools of the commonwealth, forty-eight state scholarships are established.]

Scholarships established.  
1863, 138, § 1.

Arrangement  
of sections and  
classes for  
scholarships.  
1853, 193, § 2.

SECT. 2. (R.) [The sections and classes of sections, and the order in which they are entitled to scholarships as now arranged by the board of education, shall continue until the year eighteen hundred and sixty-one, at which time, and at the expiration of every ten years thereafter, the board shall arrange the senatorial districts into four classes of ten sections each, and each of said classes shall, once in four years, in such alternate order as the board, at the time of the formation of the classes, by lot designates, be entitled to one scholarship for each of its sections. The secretary of the board shall through the mail notify the school committee of each town or city of the year its class is entitled to scholarships.]

Candidates for  
scholarships,  
how recom-  
mended.  
Qualifications.  
Vacancies, how  
filled.  
1853, 193, § 3.  
See 1864, 218.

SECT. 3. (R.) [The school committees of the towns and cities in each class, may in the year in which their class is entitled to scholarships recommend as candidates therefor, young men, inhabitants of their town or city, who shall furnish the board of education with the certified opinion of said committee and of a competent teacher, that they will be fitted for college at the succeeding commencement; and said board, together with the senator if he resides within any section of such class, shall select from such candidates one scholar from each section, whom by personal examination they judge the most deserving and likely to become useful as a teacher. If any section presents no such suitable candidate, the place may be filled by the board from the candidates of the other sections of the same class, and if from a deficiency of proper candidates less than ten scholars are selected from a class, the board may, after a careful examination by themselves as to scholarship, complete the number from the state at large.]

Additional  
scholars.  
Character of  
candidates.  
1853, 193, § 4.

SECT. 4. (R.) [If, after the selection of ten scholars from any class of sections, other candidates from such class recommended as aforesaid are considered by the board as possessing the requisite qualifications, the board may select therefrom two additional scholars, and in default of such candidates may select such additional scholars from the state at large in the manner provided in the preceding section. All candidates shall be persons of irreproachable moral character, free from any considerable defect of sight or hearing, and of good health and constitution.]

Time and place of  
selection.  
1853, 193, § 5.  
See 1864, 218.

SECT. 5. (R.) [The selections for scholarships required to be made by the board and by the senators within the respective sections, shall be made at a meeting held annually at the office of the secretary of the board, at such time in the month of March as the board appoints, of which the secretary shall give notice. The selections to be made by the board alone may be made at the same or at any other time during the year.]

Place of educa-  
tion, how se-  
lected.  
Scholar to receive  
\$100 annually.  
1853, 193, § 6.

SECT. 6. (R.) [Any scholar so selected may be educated at any college established by law in this commonwealth which he and his friends may select; and the board shall at the end of each collegiate year, not exceeding four, upon his producing a certificate from the president of his college that he has been faithful in his studies, exemplary in his deportment, and ranks in scholarship among the first half of his class, pay to him one hundred dollars.]

Vacancies, how  
filled.  
1853, 193, § 7.

SECT. 7. (R.) [Selections to fill vacancies occurring in such scholarships may be made by the board in like manner as original selections; and the board shall take all measures necessary for that purpose.]

Scholar attend-  
ing normal  
school, allowance  
to;  
1853, 193, § 8.  
See 1864, 218.

SECT. 8. (R.) [Any such scholar after leaving college may attend a state normal school, and for each term not exceeding two during which he attends such school, he shall, upon producing a certificate of such attendance and of the faithful and exemplary performance of his duties there from the principal master thereof, be paid by the board of education, from any unexpended balance of the funds provided by section ten of this chapter, the sum of twenty-five dollars.]

to teach or  
refund.  
1853, 193, § 9.

SECT. 9. (R.) [Every person who has received aid in the manner provided by this chapter, shall teach in the public schools of the com-

monwealth the same term of time that he has received such aid; and if, being in competent health, he fails so to teach, unless he satisfies the board that such failure has arisen from inability to find employment, he shall pay to the treasurer at the rate of one hundred dollars a year for the time of such failure, with interest thereon from the time of graduation; and the treasurer may recover the amount in an action at law.]

SECT. 10. (R.) [Forty-eight hundred dollars annually from the income of the school fund not appropriated to public schools, and all such sums as the treasurer recovers under the preceding section, are appropriated to accomplish the purposes of this chapter under the direction of the board of education.]

Appropriations.  
1863, 198, § 10.  
See § 8.  
See 1864, 218.

## CHAPTER 38.

[Union Schools may be established, 1868, 278; and Industrial Schools, 1872, 86.]

### OF THE PUBLIC SCHOOLS.

#### PUBLIC SCHOOLS.

##### SECTION

1. Each town to have school six months in a year. Branches to be taught.
2. High school in towns of five hundred families. Branches taught. Duration of school. Towns of four thousand inhabitants.
3. High school districts in adjacent towns, how established.
4. Committee, how chosen. Powers.
5. to determine location of school-house.
6. Expenses apportioned.
7. Schools may be maintained for those over fifteen years of age.
8. under superintendence of school committee.
9. Female assistants.
10. Duty of instructors in colleges, &c.
11. of ministers and town officers.
12. Towns to raise money for schools.
13. Funds of corporations for supporting schools, not affected, &c.
14. Forfeiture for neglect to raise money, &c.
15. three-fourths of, to be appropriated to schools.
16. School committee, how chosen. Number; term of service.
17. Vacancies, how filled.
18. When whole committee decline, new committee how elected.
19. Term of service of person filling vacancy.
20. On election of new board, certain duties of old to continue.
21. Committee, how increased or diminished.
22. records of; secretary.

##### SECTION

23. Committee to contract with teachers, unless, &c.
24. Instructor to receive and file certificate. When and how paid.
25. may be dismissed. Compensation to cease.
26. Examinations and visits by committee.
27. Bible to be read in schools. Sectarian books excluded.
28. Committee to direct what books to be used. Change of books, how made, &c.
29. to procure books, apparatus, &c.
30. for certain scholars at expense of town.
31. Expense of books so supplied to be taxed to parents, &c.
32. If parents unable to pay, tax may be omitted.
33. Duty of committee where school is for benefit of whole town.
34. Compensation of committee.
35. Superintendent of schools, appointment, duties, &c.

#### SCHOOL-HOUSES.

36. Towns not districted, to maintain school-houses, &c.
37. Location of school-houses.
38. Land may be taken for school-house lots, &c.
39. Owner of land may have jury. Proceedings. Damages and costs.
40. Committee of town not districted to have charge of school-houses.
41. Provisions of chapter to apply to cities, except, &c.

SECTION 1. In every town there shall be kept, for at least six months in each year, at the expense of said town, by a teacher or teachers of competent ability and good morals, a sufficient number of schools for the instruction of all the children who may legally attend public school therein, in orthography, reading, writing, English grammar, geography, arithmetic, the history of the United States, and good behavior. Algebra, vocal music, drawing, physiology, and hygiene shall be taught by lectures or otherwise, in all the public schools in which the school committee deem it expedient.

SECT. 2. Every town may, and every town containing five hundred families or householders shall, besides the schools prescribed in the preceding section, maintain a school to be kept by a master of competent ability and good morals, who, in addition to the branches of learning

Each town to have school six months in a year. Branches taught. R. S. 23, § 1. 1869, 56, § 1. 1868, 5, §§ 1, 2. 1868, 263. See 1862, 7. 1870, 243. 1876 c. 2.

High schools in towns of 500 families. Branches taught. See 1866, 208, § 2. 1868, 226.

Duration of school.  
Towns of 4000 inhabitants  
R. 8, 23, § 5.  
1852, 123.  
1857, 206, § 2.  
16 Mass. 141.  
10 Met. 508.  
11 Cush. 178.  
98 Mass. 589.

High school districts in adjacent towns, how established.  
1848, 279, § 1.  
103 Mass. 99.

Committee, how chosen.  
Powers.  
1848, 279, § 2.

to determine location of school-house.  
1848, 279, § 3.

Expenses apportioned.  
1848, 279, § 4.

Schools may be maintained for those over 15 years of age;  
1857, 189, § 1.  
See 1869, 306.

under superintendence of committee.  
1857, 189, § 2.  
Female assistants.  
1839, 56, § 1.

Duty of instructors in colleges, &c.  
Constitution, Ch. 5, § 2.  
R. 8, 23, § 7.  
12 Allen, 127.

before mentioned, shall give instruction in general history, bookkeeping, surveying, geometry, natural philosophy, chemistry, botany, the civil polity of this commonwealth and of the United States, and the Latin language. Such last mentioned school shall be kept for the benefit of all the inhabitants of the town, ten months at least, exclusive of vacations, in each year, and at such convenient place, or alternately at such places, in the town, as the legal voters at their annual meeting determine. And in every town containing four thousand inhabitants, the teacher or teachers of the schools required by this section, shall, in addition to the branches of instruction before required, be competent to give instruction in the Greek and French languages, astronomy, geology, rhetoric, logic, intellectual and moral science, and political economy.

SECT. 3. Two adjacent towns, having each less than five hundred families or householders, may form one high school district, for establishing such a school as is contemplated in the preceding section, when a majority of the legal voters of each town, in meetings called for that purpose, so determine.

SECT. 4. The school committees of the two towns so united shall elect one person from each of their respective boards, and the two so elected shall form the committee for the management and control of such school, with all the powers conferred upon school committees and prudential committees.

SECT. 5. The committee thus formed shall determine the location of the school-house authorized to be built by the towns forming the district, or if the towns do not determine to erect a house, shall authorize the location of such school alternately in the two towns.

SECT. 6. In the erection of a school-house for the permanent location of such school, in the support and maintenance of the school, and in all incidental expenses attending the same, the proportions to be paid by each town, unless otherwise agreed upon, shall be according to its proportion of the county tax.

SECT. 7. Any town may establish and maintain, in addition to the schools required by law to be maintained therein, schools for the education of persons over fifteen years of age; may determine the term or terms of time in each year, and the hours of the day or evening during which said school shall be kept; and appropriate such sums of money as may be necessary for the support thereof.

SECT. 8. When a school is so established, the school committee shall have the same superintendence over it as they have over other schools; and shall determine what branches of learning may be taught therein.

SECT. 9. In every public school, having an average of fifty scholars, the school district or town to which such school belongs shall employ one or more female assistants, unless such district or town, at a meeting called for the purpose, votes to dispense with such assistant.

SECT. 10. It shall be the duty of the president, professors and tutors of the university at Cambridge and of the several colleges, of all preceptors and teachers of academies, and of all other instructors of youth, to exert their best endeavors to impress on the minds of children and youth committed to their care and instruction, the principles of piety and justice, and a sacred regard to truth; love of their country, humanity, and universal benevolence; sobriety, industry, and frugality; chastity, moderation, and temperance; and those other virtues which are the ornament of human society and the basis upon which a republican constitution is founded; and it shall be the duty of such instructors to endeavor to lead their pupils, as their ages and capacities will admit, into a clear understanding of the tendency of the above mentioned virtues, to preserve and perfect a republican constitution and secure the blessings of liberty, as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite vices.

SECT. 11. It shall be the duty of the resident ministers of the gospel, the selectmen, and the school committees, to exert their influence and use their best endeavors that the youth of their towns shall regularly attend the schools established for their instruction.

SECT. 12. The several towns shall, at their annual meetings, or at a regular meeting called for the purpose, raise such sums of money for the support of schools as they judge necessary; which sums shall be assessed and collected in like manner as other town taxes.

SECT. 13. Nothing contained in this chapter shall affect the right of any corporation established in a town, to manage any estate or funds given or obtained for the purpose of supporting schools therein, or in any wise affect such estate or funds.

SECT. 14. A town which refuses or neglects to raise money for the support of schools as required by this chapter, shall forfeit a sum equal to twice the highest sum ever before voted for the support of schools therein. A town which refuses or neglects to choose a school committee to superintend said schools, or to choose prudential committees in the several districts, when it is the duty of the town to choose such prudential committee, shall forfeit a sum not less than five hundred nor more than one thousand dollars, to be paid into the treasury of the county.

SECT. 15. Three-fourths of any forfeiture paid into the treasury of the county under the preceding section, shall be paid by the treasurer to the school committee, if any, otherwise to the selectmen of the town from which it is recovered, who shall apportion and appropriate the same to the support of the schools of such town, in the same manner as if it had been regularly raised by the town for that purpose.

SECT. 16. Every town shall, at the annual meeting, choose, by written ballots, a board of school committee, which shall have the general charge and superintendence of all the public schools in town. Said board shall consist of any number of persons divisible by three, which said town has decided to elect, one-third thereof to be elected annually, and continue in office three years. If a town fails or neglects to choose such committee, an election at a subsequent meeting shall be valid.

SECT. 17. If any person elected a member of the school committee, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if any member of the board declines further service, or, from change of residence or otherwise, becomes unable to attend to the duties of the board, the remaining members shall, in writing, give notice of the fact to the selectmen of the town, or to the mayor and aldermen of the city, and the two boards shall thereupon, after giving public notice of at least one week, proceed to fill such vacancy; and a majority of the ballots of persons entitled to vote shall be necessary to an election.

SECT. 18. If all the persons elected as members of the school committee, after such notice of their election, refuse or neglect to accept the office, or having accepted, afterwards decline further service, or become unable to attend to the duties of the board, the selectmen or the mayor and aldermen shall, after giving like public notice, proceed by ballot to elect a new board, and the votes of a majority of the entire board of selectmen, or of the mayor and aldermen, shall be necessary to an election.

SECT. 19. The term of service of every member elected in pursuance of the provisions of the two preceding sections, shall end with the municipal or official year in which he is chosen, and if the vacancy which he was elected to fill was for a longer period, it shall, at the first annual election after the occurrence of the vacancy, be filled in the manner prescribed for original elections of the school committee.

SECT. 20. All the members of the school committee shall continue

Duty of ministers and town officers.  
R. S. 23, § 8.  
101 Mass. 143.

Towns to raise money for schools.  
R. S. 23, § 9.  
10 Met. 513.

School funds of corporations not affected, &c.  
R. S. 23, § 59.

Forfeiture for neglect to raise money, &c.:  
R. S. 23, § 60.  
1839, 136.

three fourths of, appropriated to schools.  
R. S. 23, § 61.

School committee, how chosen, &c.  
R. S. 23, § 10.

1867, 270, §§ 1, 2.  
1869, 264.  
23 Pick. 225.  
5 Cush. 207.  
10 Allen, 149.  
12 Allen, 137.  
101 Mass. 143.  
106 Mass. 475.  
Vacancies, how filled.  
1867, 266, §§ 1, 2.

When whole committee decline, new committee how elected.  
1867, 266, § 2.

Term of service of person filling vacancy.  
1867, 266, § 3.  
1867, 270, § 3.  
1869, 80.

*Women*  
1874, 377.

On election of new board, certain duties of old to continue.

1846, 223, § 1.  
1857, 268, § 3.  
1857, 270, § 3.  
See 1866, 134.

Committee, how increased or diminished;  
1857, 270, § 4.

records of;  
secretary;  
1888, 106, § 3.

to contract with teachers, unless, &c.  
R. S. 23, § 13.  
1888, 106, § 2.  
1859, 60.  
9 Allen, 94.  
98 Mass. 587.

Teachers to receive and file certificate;  
when and how paid;  
R. S. 23, § 14.  
1850, 115.  
1856, 126.

may be dismissed, &c.  
1844, 32.  
9 Allen, 94.

Examinations and visits by committee.  
R. S. 23, §§ 15, 16.

1873 c. 292 § 2.  
1876 c. 186

Bible to be read in schools.  
Sectarian books excluded.  
R. S. 23, § 23.  
1856, 410.

(R.) Repeal and substitute.  
1862, 57.

School books; change of how made, &c.  
R. S. 23, § 17.  
1850, 93, §§ 2, 3.  
See 1868, 126.  
1867, 156.

1873 c. 292 § 3

Repealed  
1876 c. 47

in office for the purpose of superintending the winter terms of the several schools, and of making and transmitting the certificate, returns, and report of the committee, notwithstanding the election of any successor at the annual meeting; but for all other duties, the term of office shall commence immediately after election.

SECT. 21. Any town may, at the annual meeting, vote to increase or diminish the number of its school committee. Such increase shall be made by adding one or more to each class, to hold office according to the tenure of the class to which they are severally chosen. Such diminution shall be made by choosing, annually, such number as will in three years effect it, and a vote to diminish shall remain in force until the diminution under it is accomplished.

SECT. 22. The school committee shall appoint a secretary and keep a permanent record book, in which all its votes, orders and proceedings shall by him be recorded.

SECT. 23. The school committee, unless the town at its annual meeting determines that the duty may be performed by the prudential committee, shall select and contract with the teachers of the public schools; shall require full and satisfactory evidence of the good moral character of all instructors who may be employed; and shall ascertain, by personal examination, their qualifications for teaching and capacity for the government of schools.

SECT. 24. Every instructor of a town or district school shall, before he opens such school, obtain from the school committee a certificate in duplicate of his qualifications, one of which shall be deposited with the selectmen before any payment is made to such instructor on account of his services; and upon so filing such certificate, the teacher of any public school shall be entitled to receive, on demand, his wages due at the expiration of any quarter, or term longer or shorter than a quarter, or upon the close of any single term of service, subject to the condition specified in section thirteen of chapter forty.

SECT. 25. The school committee may dismiss from employment any teacher whenever they think proper, and such teacher shall receive no compensation for services rendered after such dismissal.

SECT. 26. The school committee, or some one or more of them, for the purpose of making a careful examination of the schools, and of ascertaining that the scholars are properly supplied with books, shall visit all the public schools in the town on some day during the first or second week after the opening of such schools respectively, and also on some day during the two weeks preceding the closing of the same; and shall also for the same purposes visit, without giving previous notice thereof to the instructors, all the public schools in the town once a month, and they shall, at such examinations, inquire into the regulation and discipline of the schools, and the habits and proficiency of the scholars therein.

SECT. 27. (R.) [The school committee shall require the daily reading of some portion of the Bible in the common English version; but shall never direct any school books calculated to favor the tenets of any particular sect of christians to be purchased or used in any of the town schools.]

SECT. 28. The school committee shall direct what books shall be used in the public schools, and no change shall be made in said books except by the unanimous consent of the whole board, unless the committee consists of more than nine, and questions relating to school books are intrusted to a sub-committee. In that case, the consent of two-thirds of the whole number of said sub-committee, with the concurrent vote of three-fourths of the whole board, shall be requisite for such change. If any change is made, each pupil then belonging to the public schools, and requiring the substituted book, shall be fur-



nished with the same, by the school committee, at the expense of said town.

SECT. 29. The school committee shall procure, at the expense of the city or town, a sufficient supply of text-books for the public schools, and give notice of the place where they may be obtained. Said books shall be furnished to the pupils at such prices as merely to reimburse the expense of the same. The school committee may also procure, at the expense of the city or town, such apparatus, books of reference, and other means of illustration as they deem necessary for the schools under their supervision, in accordance with appropriations therefor previously made.

Committee to procure text-books, apparatus, &c.,  
R. S. 23, § 19.  
1869, 93, § 1.  
13 Pick. 229.

1873 c. 106

SECT. 30. If any scholar is not furnished by his parent, master, or guardian, with the requisite books, he shall be supplied therewith by the school committee at the expense of the town.

for certain scholars at expense of town.  
R. S. 23, § 20.

SECT. 31. The school committee shall give notice in writing to the assessors of the town of the names of the scholars supplied with books under the provisions of the preceding section, of the books so furnished, the prices thereof, and the names of the parents, masters, or guardians, who ought to have supplied the same. The assessors shall add the price of the books to the next annual tax of such parents, masters, or guardians; and the amount so added shall be levied, collected, and paid into the town treasury, in the same manner as the town taxes.

Expense of books so supplied to be taxed to parents, &c.  
R. S. 23, § 21.

SECT. 32. If the assessors are of opinion that any parent, master, or guardian, is unable to pay the whole expense of the books so supplied on his account, they shall omit to add the price of such books, or shall add only a part thereof, to his annual tax, according to their opinion of his ability to pay.

If parents unable to pay, tax may be omitted.  
R. S. 23, § 22.

SECT. 33. In any town containing five hundred families in which a school is kept for the benefit of all the inhabitants as before provided, the school committee shall perform the like duties in relation to such school, the house where it is kept, and the supply of all things necessary therefor, as the prudential committee may perform in a school district.

Duty of committee where school is for benefit of whole town.  
R. S. 23, § 11.

SECT. 34. The members of the school committee shall be paid in cities one dollar, and in towns one dollar and a half, each, a day, for the time they are actually employed in discharging the duties of their office, together with such additional compensation as the town or city may allow.

Compensation of committee.  
1888, 106, § 4.  
1869, 108.

1873 c. 157

SECT. 35. Any town annually by legal vote, and any city by an ordinance of the city council, may require the school committee annually to appoint a superintendent of public schools, who, under the direction and control of said committee, shall have the care and supervision of the schools, with such salary as the city government or town may determine; and in every city in which such ordinance is in force, and in every town in which such superintendent is appointed, the school committee shall receive no compensation, unless otherwise provided by such city government or town.

Superintendent of schools, appointment, duties, &c.  
1864, 814.  
1866, 232, §§ 1, 2.  
See 1860, 101.  
1870, 117, 183.

1873 c. 108

1874 . 21

111m. 87

#### SCHOOL-HOUSES.

SECT. 36. Every town not divided into school districts shall provide and maintain a sufficient number of school-houses, properly furnished and conveniently located, for the accommodation of all the children therein entitled to attend the public schools; and the school committee, unless the town otherwise direct, shall keep them in good order, procuring a suitable place for the schools, where there is no school-house, and providing fuel and all other things necessary for the comfort of the scholars therein, at the expense of the town.

Towns not districted, to maintain school-houses, &c.  
R. S. 23, § 32.  
1860, 286, § 2.  
1869, 252, §§ 4, 5.  
See 1871, 146.

SECT. 37. Any town, at a meeting legally called for the purpose, may determine the location of its school-houses, and adopt all necessary

Location of school-houses.

109th. 206 R.B. 23, §§ 23, 32.  
1859, 252, § 4.

Land may be  
taken for school-  
house lots, &c.  
1848, 237, § 1.  
1855, 318, § 1.  
2 Gray, 414.

See 1839, 23.  
10 Gray, 40.  
4 Allen, 508.  
102 Mass. 512.

R. 1874, 1342

Owner of land,  
may have jury.  
Proceedings.  
Damages and  
costs.  
1848, 237.  
1851, 186.  
1855, 10.  
2 Gray, 414.

109th. 225

Committee of  
town not dis-  
tricted, to have  
charge of school-  
houses.

Provisions of  
chapter to apply  
to cities, except,  
&c.

measures to purchase or procure the land for thereof.

SECT. 38. When land has been designated by or those acting under its authority, or determine men as a suitable place for the erection of a school buildings, or for enlarging a school-house lot, if the same, or demands therefor a price deemed by sonable, they may, with the approbation of the town at their discretion, and lay out, a school-house lot thereof, and to appraise the damages to the owner in manner provided for laying out highways and appraised thereby; and upon payment, or tender of payment of such damages, to the owner, by the town, the land so held, and used, for the purpose aforesaid. But no enlargement shall exceed, in the whole, eighty square feet of land occupied by the school buildings.

SECT. 39. When the owner feels aggrieved by the enlargement of such lot, or by the award of damages therefor in writing to the county commissioner, he may, hereafter, have the matter of his complaint tried by a jury, who may change the location of such lot or enlarge the same, and award damages therefor. The proceeding shall in all cases be in the manner provided in cases of damages by laying out highways. If the damages are increased, or the location changed, the damages and all charges shall be paid by the owner. The land so taken shall be held and used for no other purpose than that contemplated by this chapter, and shall revert to the owner, or his assigns, upon the discontinuance thereof, for or as is required by law to be kept by the town.

SECT. 40. The school committee of a town in which a district system has been abolished, or does not exist, shall have the charge and superintendence of the school-houses, and the relation to the use to which the same may be applied.

SECT. 41. Except as may be otherwise provided in the charters, or acts in amendment thereof, the provisions of this chapter shall apply to cities. And the several cities are authorized to execute the provisions of the thirty-eight of this chapter to the selectmen and

## CHAPTER 39.

### OF SCHOOL DISTRICTS.

[Abolished by 1860, 110, 423; but may be re-established.]

#### SCHOOL DISTRICTS.

##### Sections

1. Districts, how formed, when reorganized.
2. to be corporations for certain purposes.
3. may be abolished, &c.
4. towns to vote on abolition of.
5. secretary to notify towns, &c., to insert in warrant concerning
6. corporate powers of, to continue for certain purposes.
7. Prudential committee in each district. Duties.
8. may be chosen by the districts.
9. to consist of three persons in certain cases.
10. vacancies in, how filled.

##### Sections

11. Prudential committee formed by town.
12. If district does not exist, committee may, &c.
13. District meeting, warrants for.
14. manner of holding.
15. districts may be divided.
16. Clerk to be chosen.
17. liable only when liable.
18. Districts may fix site.

SECTION

19. Towns may provide school-houses at the common expense.
20. Selectmen to determine site, in case, &c.
21. Penalty on school district for not providing school-house.
22. Personal and real estate, where taxed.
23. Manufacturing corporations, where taxed.
24. Non-residents, where taxed.
25. Same subject.
26. School taxes assessed like town taxes.
27. Assessors to issue warrants to collectors.
28. Money raised, to be at disposal of committees.
29. If district refuses to raise money, town may order it.
30. If district neglects to organize, school committee may provide, &c.
31. Collectors to proceed as in collecting town taxes.
32. Treasurer to have like powers, &c.
33. Compensation of assessors, &c.
34. Abatement of taxes.

UNION DISTRICTS.

35. Union districts, how formed, &c.

SECTION

36. First meeting. Subsequent meetings. Location of house.
37. Clerk, how chosen, &c.
38. Assessments, how made.
39. Prudential committees, how constituted. Powers and duties, &c.
40. Usual schools maintained.
41. School committees, powers and duties of.

CONTIGUOUS SCHOOL DISTRICTS IN ADJOINING TOWNS.

42. Contiguous districts in adjoining towns may unite.
43. Union not formed without consent of districts, &c.
44. United districts may be separated.
45. meetings of, how called.
46. Prudential committee to be chosen, &c.
47. Money raised, to be in proportion, &c.
48. how assessed.
49. School committees of adjoining towns to officiate in turns.

SECTION 1. Towns may provide for the support of schools without forming school districts; or may, at a meeting called for the purpose, divide into such districts and determine the limits thereof; but shall not, oftener than once in ten years from the second day of May, eighteen hundred and forty-nine, be districted anew so as to change the taxation of lands from one district to another having a different school-house.

10 Gray, 85. 11 Gray, 431. 16 Gray, 364. 1 Allen, 49. 97 Mass. 425.

SECT. 2. A school district shall be a body corporate so far as to prosecute and defend in all actions relating to the property or affairs of the district, and may take and hold, in fee simple or otherwise, any estate real or personal given to or purchased by the district for the support of a school or schools therein.

SECT. 3. A town may, at any time, abolish the school districts therein, and shall thereupon forthwith take possession of all the school-houses, land, apparatus and other property owned and used for school purposes, which such districts might lawfully sell and convey. The property so taken shall be appraised under the direction of the town, and at the next annual assessment thereafter, a tax shall be levied upon the whole town, equal to the amount of said appraisal; and there shall be remitted to the tax payers of each district the said appraised value of its property thus taken. Or the difference in the value of the property of the several districts may be adjusted in any other manner agreed upon by the parties in interest.

SECT. 4. Every town divided into school districts shall, at the annual meeting in the year eighteen hundred and sixty-three, and every third year thereafter, vote upon the question of abolishing such districts.

SECT. 5. The secretary of the commonwealth, on the recurrence of a year when the vote thus required is to be had, shall seasonably notify thereof the selectmen of the several towns, and require them, in towns retaining the school district system, to insert an article in the warrant for the annual meeting, for the purpose specified in the preceding section; and the selectmen of any town who neglect to insert such article in the warrant, when so required, shall forfeit twenty dollars.

SECT. 6. Upon the abolition or discontinuance of any district, its corporate powers and liabilities shall continue and remain so far as may be necessary for the enforcement of its rights and duties; and the property which it possessed at the time shall be subject to all legal process against it.

SECT. 7. Every town divided into school districts shall, at its annual meeting, choose one person, resident in each school district, to be a

Districts;  
R. S. 23, § 24.  
1849, 203.  
1851, 303.  
23 Pick. 70.  
4 Cush. 250.  
10 Cush. 418.  
4 Gray, 250.  
7 Gray, 411.

to be corporations, &c.:  
R. S. 23, §§ 57, 58.  
13 Mass. 193.  
6 Met. 497, 546.  
10 Met. 494.

may be abolished, &c.:  
1850, 296, § 1.  
1852, 199.  
See § 19.  
See 1830, 135.  
1835, 255, § 2.  
1867, 154.  
1839, 110, 422.  
1870, 193.  
13 Allen, 163.  
97 Mass. 425.

113 M. 40

towns to vote on abolition of;  
See acts noted on § 2, above.

secretary to notify towns, &c., to insert warrant concerning;

corporate powers of, to continue for certain purposes.  
13 Allen, 163.

Prudential committee in each district.

Duties.  
R. S. 23, § 25.  
1838, 106, § 2.  
11 Pick. 260.  
4 Cush. 599.  
8 Cush. 191.  
12 Gray, 61.  
100 Mass. 132.

Prudential committee, how chosen ;  
R. S. 23, § 26.  
21 Pick. 75.  
to consist of three persons ;  
1839, 137.  
4 Gray, 250.  
vacancies in, how filled ;  
1855, 461.

town committee to act as, when, &c.  
R. S. 23, § 31.

If district does not establish school, town committee may.  
R. S. 23, § 45.  
9 Allen, 96.

District meetings, selectmen, &c., may issue warrants for ;  
R. S. 23, § 46.  
8 Cush. 592.

manner of warning ;  
R. S. 23, § 47.  
4 Greenl. 46.  
14 Mass. 315.  
12 Pick. 206.  
1 Allen, 282.

districts may prescribe mode of calling.  
R. S. 23, § 48.  
1850, 213.

10 Pick. 543.  
2 Cush. 419.  
8 Cush. 592.  
1 Allen, 232.  
Clerk to be chosen, and sworn, keep records, &c. ;  
R. S. 23, § 27.  
21 Pick. 75.  
12 Met. 105.

Liable only for want of integrity.  
District, when liable.  
R. S. 23, § 29.  
10 Pick. 543.  
11 Pick. 456.  
97 Mass. 424.  
Districts may raise money for school-houses.

committee for that district, and to be called the prudential committee, who shall keep the school-house in good order at the expense of the district; and if there is no school-house, shall provide a suitable place for the school of the district at the expense thereof; shall provide fuel and all things necessary for the comfort of the scholars therein; give information and assistance to the school committee of the town to aid them in the discharge of the duties required of them; and, when the town so determines, shall select and contract with an instructor for each school in the district.

SECT. 8. If a town so determines, the prudential committee may be chosen by the legal voters of the several school districts to which they respectively belong, in such manner as the district directs.

SECT. 9. When a town determines that the prudential committees shall select and contract with the school teachers for their districts, three persons in each district may be chosen to act as such committee.

SECT. 10. When the office of prudential committee becomes vacant in any district, by reason of the death, resignation, or removal of the person or persons elected, such district may fill the vacancy at a legal meeting called for the purpose.

SECT. 11. When no prudential committee is chosen for a school district, the school committee shall perform all the duties of the prudential committee.

SECT. 12. If a school district neglects or refuses to establish a school and employ a teacher for the same, the school committee may establish such school and employ a teacher therefor, as the prudential committee might have done.

SECT. 13. The selectmen of the several towns divided into school districts as aforesaid, or the prudential committee of every such district, upon application made to either of them respectively, in writing, by three or more residents who pay taxes in the district, shall issue their warrant, directed to one of the persons making the application, requiring him to warn the inhabitants of such district, qualified to vote in town affairs, to meet at the time and place in the district expressed in the warrant.

SECT. 14. The warning shall be given seven days at least before the time appointed for the meeting, by personal notice to every inhabitant of the district qualified to vote in town affairs, or by leaving at his last and usual place of abode a written notification, expressing the time, place and purpose of the meeting, unless the district prescribes another mode of warning its meetings.

SECT. 15. A school district, at any regular meeting having an article in the warrant for that purpose, may prescribe the mode of warning all future meetings of the district; and may also direct by whom and in what manner such meetings may be called. Notwithstanding such prescribed mode, meetings may nevertheless be called in accordance with the provisions of the two preceding sections.

SECT. 16. The inhabitants of each school district, qualified to vote in town affairs, shall choose a clerk, who shall be sworn by the moderator, in open meeting, or by a justice of the peace; make a fair record of all votes passed at meetings of the district; certify the same when required, and hold his office until a successor is chosen and qualified.

SECT. 17. The clerk shall be answerable only for want of integrity on his own part; and if he certifies truly to the assessors of the town the votes of the district for raising, by a tax, any sum of money, the district shall be liable in case of any illegality in the proceedings in relation to raising such money.

SECT. 18. The legal voters of any district, at a meeting called for that purpose, may raise money for erecting or repairing school-houses in their district; for purchasing or hiring any buildings to be used as

school-houses, and land for the use and accommodation thereof; and for purchasing libraries and necessary school apparatus, fuel, furniture, and other necessary articles, for the use of schools; they may also determine in what part of their district such school-houses shall stand, and choose any committee to carry into effect the provisions aforesaid.

Districts may fix site.  
R. S. 23, § 28.  
1849, 81, § 1.  
21 Pick. 75.  
10 Cusb. 418.  
7 Allen, 206.

SECT. 19. The legal voters of every town may, if they think it expedient, carry into effect the provisions of the preceding section at the common expense of the town, so far as relates to providing school-houses for the several school districts of the town; and the town in such case may, at any legal meeting, raise money and adopt all other proper measures for this purpose, and, if already districted, may take possession of the school-houses and property of the several districts in the manner provided in section three of this chapter.

Towns may provide school-houses, at the common expense.  
R. S. 23, § 82.  
1850, 286, § 2.

SECT. 20. If a school district cannot determine by a vote of two-thirds of the legal voters present and voting thereon, where to place their school-house, the selectmen, upon application made to them by the committee appointed to build or procure the school-house, or by five or more of the legal voters of the district, shall determine where such school-house shall be placed.

Selectmen to determine site, in case, &c.  
R. S. 23, § 39.  
1852, 119.  
2 Gray, 414.

SECT. 21. A school district, obliged by law to provide a suitable school-house, shall, for neglecting one year so to do, be liable to a fine not exceeding two hundred dollars, to be recovered by indictment, on complaint of any legal voter in said district, to be appropriated to the support of schools therein.

Penalty on school district for not providing school-house.

SECT. 22. In raising and assessing money in the several school districts, every inhabitant of the district shall be taxed in the district in which he lives, for all his personal estate, and for all the real estate which he holds in the town, being under his own actual improvement; and all other of his real estate in the same town shall be taxed in the district in which it lies.

Personal and real estate, where taxed.  
R. S. 23, § 33.  
5 Mass. 330.  
12 Met. 181.  
9 Gray, 433.

SECT. 23. In the assessment of taxes pursuant to the preceding section, all real estate and machinery belonging to manufacturing corporations or establishments shall be taxed in the school districts where the same are situated; and in assessing the shares in such corporation, or the personal estate of the owners of such establishments, for the like purposes, the value of such machinery and real estate shall first be deducted from the value of such shares or personal estate.

Manufacturing corporations, where taxed.  
R. S. 23, § 34.  
1850, 301.

SECT. 24. All the land within a town, owned by the same person not living therein, shall be taxed in the same district.

Non-residents, where taxed.  
R. S. 23, § 36.  
Same subject.  
R. S. 23, § 35.  
7 Allen, 205.  
97 Mass. 427.  
100 Mass. 134.

SECT. 25. When the estate of a non-resident owner is taxed, it may be taxed in such district as the assessors of the town determine; and the assessors, before they assess a tax for any district, shall determine in which district the estate of any such non-resident shall be taxed, and certify in writing their determination to the clerk of the town, who shall record the same; and such estate, while owned by the same person resident without the limits of the town, shall be taxed in such district accordingly until the town is districted anew.

School taxes assessed like town taxes.  
R. S. 23, § 37.  
3 Mass. 230.  
3 Cusb. 567.  
14 Pick. 362.  
12 Met. 178.

SECT. 26. The assessors of the town shall assess, in the same manner as town taxes are assessed, on the polls and estates of the inhabitants of each school district, and on all estates liable to be taxed therein as aforesaid, all money voted to be raised by the legal voters of such district for the purposes aforesaid; and such assessment shall be made within thirty days after the clerk of the district has certified to said assessors the sum voted by the district to be raised.

Assessors to issue warrants to collectors.  
R. S. 23, § 38.  
5 Pick. 463.  
12 Pick. 214.

SECT. 27. The assessors shall make a warrant, substantially in the form heretofore used, except that a seal shall not be required thereto, directed to one of the collectors of the town, requiring him to collect the tax so assessed, and to pay the same to the treasurer of the town within a time to be limited in the warrant; and a certificate of the

assessment shall be made by the assessors and delivered to the treasurer.

Money raised, to be at disposal of committee.  
R. S. 23, § 30.  
11 Gray, 487.

SECT. 28. The money so collected and paid shall be at the disposal of the committee appointed by the district, to be by them applied to the building or repairing of school-houses, or to the purchase of buildings to be used as such, or of land for their sites, as before provided, and according to the votes or directions of the legal voters of the district.

If district refuses to raise money, town may order it.  
R. S. 23, § 44.  
1848, 274.

SECT. 29. If at a meeting of the legal voters of a school district called for the purpose of raising money, a majority of the voters present are opposed thereto, any five inhabitants of the district, who pay taxes, may make application in writing to the selectmen of the town, requesting them to insert in their warrant for the next town meeting an article requiring the opinion of the town relative to the expediency of raising such money as was proposed in the warrant for the district meeting; and if the majority of the voters think the raising of any of the sums of money proposed in the warrant is necessary and expedient, they may vote such sum as they think necessary for said purposes, and the same shall be assessed on the polls and estates of the inhabitants of such district, and be collected and paid over in the manner before provided. They may also empower the selectmen of the town, or the school committee, or may choose a committee, to carry into effect the purposes for which such money is voted, if such district neglects or refuses to choose a committee for that purpose.

If district neglects to organize, school committee may provide, &c.  
1858, 145, § 1.

SECT. 30. If a district neglects to organize by the choice of officers, the money necessary for the erection, repair, or enlargement, of a school-house therein, may be expended by order of the school committee, and, upon their certificate, shall be assessed upon the polls and estates of the inhabitants of the district, collected like other district taxes, and paid into the treasury of the city or town.

Collectors, how to collect taxes.  
R. S. 23, § 40.

SECT. 31. In collecting district taxes the collectors shall have the same powers and proceed in the manner provided by law in collecting town taxes.

Treasurer, powers of &c.  
R. S. 23, § 41.

SECT. 32. The treasurer of a town, to whom a certificate of the assessment of a district tax is transmitted, shall have the like authority to enforce the collection and payment of the money so assessed and certified, as he has in the case of money raised by the town, for the use of the town.

Compensation of assessors, &c.  
R. S. 23, § 42.

SECT. 33. The assessors, treasurer, and collector, shall have the same compensation, respectively, for assessing, collecting and paying out money, assessed for the use of a school district, as is allowed by the town for like services in respect to town taxes.

Abatement of taxes.

SECT. 34. The assessors shall have the same power to abate the tax, or any part thereof, assessed on an inhabitant of a school district, as they have to abate town taxes.

#### UNION DISTRICTS.

[Abolished 1869, 423; but may be re-established 1870, 196.]

Union districts, how formed, &c.  
1838, 189, §§ 1, 2, 5.  
1869, 56, § 2.  
See 1861, 182.

SECT. 35. Two or more contiguous school districts in by a vote of two-thirds of the legal voters of each district, voting at legal meetings of their respective districts called pose, associate and form a union district, for the purpose of a union school for the benefit of the older children of such districts; such district shall have the powers, privileges, and of school districts, with such name as the district determine meeting.

First meeting. Subsequent meetings. Location of house.  
1838, 189, §§ 3, 5.

SECT. 36. The districts proposing such association shall of voting to form the union, respectively agree upon the manner of calling the first meeting of the union district from time to time determine the mode of calling and warn.

ings, the time and place of its annual meetings, and the place where its school-house shall stand. The location of the school-house, if not determined by the district, shall be referred to the selectmen, as provided for other districts.

SECT. 37. Each union district, at its first meeting, shall choose by ballot a clerk, who shall be sworn in the manner, and perform the duties, prescribed for clerks of other school districts, and hold the office until a successor is chosen and qualified.

Clerk, how chosen, &c.  
1888, 189, § 4

SECT. 38. In raising and assessing money in such districts, every inhabitant shall be taxed in the manner in which inhabitants of other school districts are taxed, and the real estate of non-resident owners taxable in either of the districts composing the union district shall be taxed in such districts.

Assessments, how made.  
1888, 189, § 5.

SECT. 39. The prudential committees of the respective districts, forming the union district, shall together constitute the prudential committee of such district; have the powers and discharge the duties, in relation to the school and school-house of the district, prescribed to prudential committees in relation to the schools and school-houses in their respective districts; and determine what proportion of the money raised and appropriated by the town for each of the districts composing the union district shall be appropriated and expended in paying the instructors of the union school; subject in all matters to any legal votes of the union district.

Prudential committees, how constituted. Powers and duties, &c.  
1888, 189, §§ 6, 7.

SECT. 40. The public schools required by law shall continue to be maintained in each of the districts thus associated, as if no union district had been formed.

Usual schools maintained.  
1888, 189, § 7.

SECT. 41. The school committee shall have the powers and duties in relation to such union school which they have in relation to other district schools.

School committees, powers and duties of.  
1888, 189, § 8.

#### CONTIGUOUS SCHOOL DISTRICTS IN ADJOINING TOWNS.

[See 1865, 255; 1869, 110, 423; 1870, 196.]

SECT. 42. If two or more contiguous school districts in adjoining towns are too small to maintain schools advantageously in each, such districts may unite and form one district, with the powers, privileges, and liabilities allowed or prescribed in regard to school districts.

Contiguous districts in adjoining towns may unite.  
R. S. 23, § 49.  
103 Mass. 99.

SECT. 43. No district shall be so united, unless the legal voters of each, at legal meetings called for the purpose, agree thereto; nor, unless the respective towns, at legal town meetings called for the purpose, assent to the same; and when such vote is passed by a school district, the clerk thereof shall forthwith send a certified copy to the clerk of his town.

Union not formed without consent of districts, &c.  
R. S. 23, § 50.

SECT. 44. When the voters in such united district, at a legal meeting called for the purpose, deem it expedient to separate and again form two or more districts, they may do so, first obtaining the consent of the respective towns.

United districts may be separated;  
R. S. 23, § 51.

SECT. 45. The first meeting of such united district shall be called in the manner agreed upon by the respective districts at the time of forming the union; and such district may, from time to time thereafter, prescribe the mode of calling and warning its meetings as other school districts may do.

meetings of, how called.  
R. S. 23, § 52.

SECT. 46. Such district, at the first meeting and annually thereafter, shall choose a prudential committee, who shall receive and expend the money raised and appropriated in each town for the united district, and possess the powers and discharge the duties allowed or prescribed to the prudential committees of other districts.

Prudential committee to be chosen, &c.  
R. S. 23, § 53.

SECT. 47. The legal voters of a united district shall, at the time of voting to raise such money, determine the amount to be paid by the inhabitants in each town, which shall be in proportion to their respec-

Money raised to be in proportion, &c.  
R. S. 23, § 54.





SECT. 5. The school committee shall cause the school registers to be faithfully kept in all the public schools, and shall annually on or before the last day of April, return the blank forms of inquiry, duly filled up, to the secretary of the board of education; and shall also specify in said returns the purposes to which the money received by their town or city from the income of the school fund has been appropriated.

SECT. 6. The school committee shall annually make a detailed report of the condition of the several public schools, which report shall contain such statements and suggestions in relation to the schools as the committee deem necessary or proper to promote the interests thereof. The committee shall cause said report to be printed for the use of the inhabitants, in octavo, pamphlet form, of the size of the annual reports of the board of education, and transmit two copies thereof to the secretary of said board, on or before the last day of April, and deposit one copy in the office of the clerk of the city or town.

SECT. 7. When a school committee fails within the prescribed time to make either the returns or report required of them by law, the secretary of the board of education shall forthwith notify such committee, or the clerk of the city or town, of such failure; and the committee or clerk shall immediately cause the same to be transmitted to the secretary.

SECT. 8. If a report or return is found to be informal or incorrect, the secretary shall forthwith return the same, with a statement of all deficiencies therein, to the committee for its further action.

SECT. 9. The returns or reports of a city or town so returned by the secretary for correction, or which have not reached his office within the time prescribed by law, shall be received by him if returned during the month of May; but in all such cases ten per cent. shall be deducted from the income of the school fund which such city or town would have been otherwise entitled to. If such returns or reports fail to reach his office before the first day of June, then the whole of such city or town's share of the income shall be retained by the treasurer of the commonwealth, and the amount so retained, as well as the ten per cent. when deducted, shall be added to the principal of the school fund. And such city or town shall in addition thereto forfeit not less than one hundred nor more than two hundred dollars: *provided, however*, if said returns and reports were duly mailed in season to reach said office within the time required by law, then the city or town from which said returns or reports are due shall be exempt from the forfeiture, otherwise incurred.

SECT. 10. The clerk of each city and town shall deliver one copy of the reports of the board of education and its secretary to the secretary of the school committee of the city or town, to be by him preserved for the use of the committee, and transmitted to his successor in office; and two additional copies of said reports, for the use of said committee; and shall also deliver one copy of said reports to the clerk of each school district, to be by him deposited in the school district library, or, if there is no such library, carefully kept for the use of the prudential committee, teachers, and inhabitants, of the district, during his continuance in office, and then transmitted to his successor; and in case the city or town shall not be districted, said reports shall be delivered to the school committee, and so deposited by them as to be accessible to the several teachers and to the citizens; and such reports shall be deemed to be the property of the town or city, and not of any officer, teacher, or citizen, thereof.

SECT. 11. When the school committee of a city or town is not less than thirteen in number, the chairman and secretary thereof may, in behalf of the committee, sign the annual school returns and the certificate required by sections four and five.

SECT. 12. A city or town which has forfeited any part of its portion

Registers and returns.

1837, 227; 1838, 105, § 6; 1846, 223, § 3; 1850, 179. See § 11. See Ch. 36, § 3. See Ch. 38, § 20. See 1856, 142.

Committees' report: to whom sent; where deposited; to be printed.

1838, 105, § 1. 1846, 223, § 4. 1859, 57.

See Ch. 36, § 3. See Ch. 38, § 20. See 1856, 142. 11 Gray, 340. 101 Mass. 142.

When report is not made. 1855, 93, § 1. See Ch. 38, § 20.

When informal, &c. 1855, 93, § 2. See Ch. 38, § 20.

Penalty for neglect or informal, &c., report. 1855, 93, § 3. 1859, 233.

Reports, &c., of board of education, how received, delivered, and for what purpose. In whom property of. 1849, 66, § 2.

Who to sign reports. 1855, 244.

Penalty on committee for neg-

lect in returns,  
&c.  
1847, 188, § 2.  
1849, 178.

Registers, how  
kept. Teachers  
not to draw pay  
until return of  
register.  
1849, 209.  
2 Allen, 592.

of the income of the school fund through the failure of the school committee to perform their duties in regard to the school report and school returns, may withhold the compensation of the committee.

SECT. 13. The several school teachers shall faithfully keep the registers furnished to them, and make due return thereof to the school committee, or such person as they may designate, and no teacher shall be entitled to receive payment for services until the register, properly filled up and completed, shall be so returned.

## CHAPTER 41.

### OF THE ATTENDANCE OF CHILDREN IN THE SCHOOLS.

[See 1869, 182.]

#### Section

1. Children to be sent to school by parents, &c. Penalty for neglect. Excuses for neglect.
2. Truant officers and school committee to inquire and report.
3. All children may attend where they reside.
4. School committee to regulate admission, &c., to high school.
5. Children may attend in adjoining town, and committee pay for instruction.

#### Section

6. Wards may attend where guardian resides.
7. Children may attend in other towns than place of parents' residence, and parents pay, &c.
8. Children not to attend unless vaccinated.
9. Race, &c., not to exclude.
10. Teachers and school committee to state grounds of exclusion.
11. Damages for exclusion, how recovered.
12. Interrogatories to committee, &c.

Children to be  
sent to school by  
parents, &c.  
Penalty for neg-  
lect. Excuses  
for neglect.  
1852, 240, §§ 1,  
2, 4.  
1855, 309.

1813 c. 279 § 1

1874 c. 233 § 1

SECTION 1. Every person having under his control a child between the ages of eight and fourteen years, shall annually during the continuance of his control send such child to some public school in the city or town in which he resides, at least twelve weeks, if the public schools of such city or town so long continue, six weeks of which time shall be consecutive; and for every neglect of such duty the party offending shall forfeit to the use of such city or town a sum not exceeding twenty dollars: but if it appears upon the inquiry of the truant officers or school committee of any city or town, or upon the trial of any prosecution, that the party so neglecting was not able, by reason of poverty, to send such child to school, or to furnish him with the means of education, or that such child has been otherwise furnished with the means of education for a like period of time, or has already acquired the branches of learning taught in the public schools, or that his bodily or mental condition has been such as to prevent his attendance at school or application to study for the period required, the penalty before mentioned shall not be incurred.

Truant officers  
and school com-  
mittee to inquire  
and report.  
1852, 240, § 8.  
1855, 309.  
1859, 188.

1813 c. 279 § 2

1874 c. 233 § 2

SECT. 2. The truant officers and the school committees of the several cities and towns shall inquire into all cases of neglect of the duty prescribed in the preceding section; and ascertain from the persons neglecting, the reasons if any therefor; and shall forthwith give notice of all violations, with the reasons, to the treasurer of the city or town; and if such treasurer wilfully neglects or refuses to prosecute any person liable to the penalty provided for in the preceding section, he shall forfeit the sum of twenty dollars.

SECT. 3. All children within the commonwealth may attend the public schools in the place in which they have their legal residence, subject to the regulations prescribed by law.

SECT. 4. The school committee shall determine the qualifications of the scholars to be admitted into the school use of the whole town.

SECT. 5. Children living remote from any public school in which they reside, may be allowed to attend the public school

Children to at-  
tend where they  
reside.  
1849, 117, § 4.

Admission to  
high school, how  
regulated.  
R. S. 23, § 15.

Children may  
attend in ad-

adjoining town, under such regulations, and on such terms, as the school committees of the said towns agree upon and prescribe; and the school committee of the town in which such children reside shall pay out of the appropriations of money raised in said town for the support of schools the sum agreed upon.

SECT. 6. Minors under guardianship, their father having deceased, may attend the public schools of the city or town of which their guardian is an inhabitant.

SECT. 7. With the consent of school committees first obtained, children between the ages of five and fifteen years may attend school in cities and towns other than those in which their parents or guardians reside; but whenever a child resides in a city or town different from that of the residence of the parent or guardian, for the sole purpose of attending school there, the parent or guardian of such child shall be liable to pay to such city or town, for tuition, a sum equal to the average expense per scholar for such school for the period the child shall have so attended.

SECT. 8. The school committee shall not allow any child to be admitted to or connected with the public schools, who has not been duly vaccinated.

SECT. 9. No person shall be excluded from a public school on account of the race, color, or religious opinions, of the applicant or scholar.

SECT. 10. Every member of the school committee under whose directions a child is excluded from a public school, and every teacher of such school from which a child is excluded, shall, on application by the parent or guardian of such child, state in writing the grounds and reason of the exclusion.

SECT. 11. A child unlawfully excluded from any public school shall recover damages therefor in an action of tort, to be brought in the name of such child by his guardian or next friend against the city or town by which such school is supported.

SECT. 12. The plaintiff in such action may, by filing interrogatories for discovery, examine any member of the school committee, or any other officer of the defendant city or town, as if he were a party to the suit.

Joining town, and committee pay for instruction. 1855, 78. 1859, 89, § 1.

Wards, where may attend. 1856, 164.

Children may attend in other towns than place of parents' residence, and parents pay, &c. 1857, 152. 103 Mass. 104.

Children to be vaccinated. 1855, 414, § 2.

Color, &c., not to exclude. 1855, 256, § 1. 12 Allen, 127. Teachers, &c., to state grounds of exclusion. 1855, 256, § 4.

Damages for exclusion. 1845, 214. 1855, 256, § 2. 8 Cush. 100. 7 Gray, 245. 12 Allen, 127. Interrogatories to committee, &c. 1855, 256, § 8.

## CHAPTER 42.

[See 1866, 238; 1867, 236; 1872, 86.]

### OF THE EMPLOYMENT OF CHILDREN AND REGULATIONS RESPECTING THEM.

SECTION

- 1 Children under fifteen, who have not attended school, &c., not to be employed in manufactory, unless, &c.
- 2 Penalty school committee to prosecute.
- 3 Children under twelve not to be employed more than ten hours a day. Penalty.
- 4 Cities and towns may make by-laws respecting habitual truants, &c. Fines.

SECTION

5. Cities and towns shall appoint persons to prosecute for violations of by-laws.
6. Minor convicted may be committed, &c.
7. On non-payment of fine, may be committed. How discharged.
8. Warrants where returnable. Compensation.

SECTION 1. Children of the age of twelve years and under the age of fifteen years, who have resided in this state for the term of six months, shall not be employed in a manufacturing establishment unless within twelve months next preceding the term of such employment they have attended some public or private day school, under teachers approved by the school committee of the place in which said school was kept, at least one term of eleven weeks, and unless they shall attend such a school for

Certain children not to be employed in manufactory, unless, &c. 1836, 245, § 1. 1849, 220, § 1. 1855, 379. 1858, 83, § 1.

welve months of such employment. Children having resided in this state for a like period, unless they have attended a like school for the thin twelve months next preceding their em- during each twelve months of such employ-

gent, or superintendent, of a manufacturing s a child in violation of the provisions of the eit a sum not exceeding fifty dollars for each / indictment, to the use of the public schools ich establishment is situated; and the school ities and towns shall prosecute for all such

er the age of twelve years shall be employed dishment more than ten hours in one day; uperintendent, who knowingly employs such of hours, shall forfeit the sum of fifty dollars of the person prosecuting therefor.

town [*may*] shall make all needful provisions ig habitual truants, and children not attending ilar and lawful occupation, or growing up in s of five and sixteen years; and also all such ildren, as shall be deemed most conducive to order of such city or town; and there shall rs suitable penalties, not exceeding twenty 1: *provided*, that said by-laws shall be ap- rt of the county.

ities and towns availing themselves of the section, shall appoint at the annual meetings / by the mayor and aldermen of such cities, alone shall be authorized, in case of viola- take the complaint and carry into execution

ected under such by-law of being an habitual school, or of being without regular and law- up in ignorance, may, at the discretion of the sdiction of the case, instead of the fine men- ommitted to any such institution of instruc- or suitable situation provided for the pur- ction four, for such time, not exceeding two urt may determine.

icted of either of said offences and sentenced lt of payment thereof, be committed to such house of reformation, or suitable situation d upon proof that the minor is unable to pay guardian, or person chargeable with his sup- e, he may be discharged by such justice or ad expedient, or he may be discharged in the be discharged from imprisonment for non-

Warrants, where  
returnable.  
Compensation.  
1864, 88.

SECT. 8. Warrants issued under this chapter shall be returnable be- fore any trial justice or judge of a police court, at the place named in the warrant; and the justice or judge shall receive such compensation as the city or town determines.

## TITLE XII.

### OF WAYS, BRIDGES, PUBLIC PLACES, FERRIES, SEWERS, AND DRAINS.

CHAPTER 43. — Of the Laying out and Discontinuance of Highways, Town Ways, and Private Ways.

CHAPTER 44. — Of the Repairs of Ways and Bridges.

CHAPTER 45. — Of Regulations and By-Laws respecting Ways and Bridges.

CHAPTER 46. — Of the Boundaries of Highways and other Public Places, and Encroachments thereon.

CHAPTER 47. — Of Ferries.

CHAPTER 48. — Of Sewers and Drains.

## CHAPTER 43.

### OF THE LAYING OUT AND DISCONTINUANCE OF HIGHWAYS, TOWN WAYS, AND PRIVATE WAYS.

#### SECTION

1. Highways to be laid out by the commissioners.
2. Recognizance for payment of costs, &c.
3. Notice to be given to towns, &c.
4. Commissioners to view premises, if requested, &c.
5. Hearing and adjudication upon common convenience, &c.
6. Notice before highway is laid out, &c.
7. Alterations between termini.
8. Commissioners may lay out, &c., highways if at time of view no one objects.
9. Upon petition for laying out, &c., highway; commissioners may order specific repairs of existing highways.
10. Highway may be temporarily closed in such case.
11. Towns to make such repairs.
12. Existing highway may be located anew.
13. Time prescribed for making highways, and for removing trees, &c.
14. Damages to be estimated, but not paid until, &c. Indemnity.
15. Damages occasioned by specific repairs. Indemnity.
16. Damages, how estimated.
17. When claimants have different interests, entire damage or indemnity to be paid to a trustee.
18. Trustee in certain cases to be appointed by judge of probate; to give bond. Suit on bond.
19. Party aggrieved to have a jury or committee.
20. Powers of jury, &c., as to laying out and altering.

#### SECTION

21. Applications for jury to revise location, &c.; when acted on.
22. to revise assessment of damages, when to be made.
23. Several applications may be considered, &c., by same jury.
24. Recognizance for costs in all cases.
25. Petitions not to abate by death of party.
26. Executors, &c., neglecting to appear, survivors may proceed.
27. Warrant for jury, directed to sheriff, &c.
28. Jury, how and whence summoned.
29. Jurors to pay fine for non-attendance.
30. Talesmen may be returned.
31. Jurors to be sworn.
32. Commissioners may appoint person to preside at trial.
33. Duties of presiding officer.
34. Commissioners to take notice on behalf of their counties. May appoint agent to attend jury.
35. Notice of trial.
36. Officer's fees.
37. Duty of jury.
38. Title of lands, determined only so far as respects damages.
39. Jury may extend time for removing trees, &c.
40. Verdict or report to be returned within three months. Court may set aside.
41. Complainant entitled to jury until verdict rendered; may waive right to trial, &c.
42. Clerks of courts to certify verdict, &c., to commissioners. Proceedings thereon.
43. Verdict, &c., recorded, conclusive.
44. Costs, how paid.

111th. 294

116th. 200

for Common a  
Rank-  
1875-163

## SECTION

45. Questions of costs, finally settled, &c.
46. Highways not to be worked or shut up until, &c.
47. Expenses, damages, &c., paid by county.
48. Expenses paid by petitioners.
49. Highways made at expense of county when towns neglect. Charged to towns.
50. Warrants to issue against towns neglecting to pay.
51. Commissioners may order expenses to be paid out of county treasury.
52. Commissioners to certify to county treasurer when highway is completed.
53. Several parties may go to same jury.
54. Notice to persons interested to become parties.
55. Verdict, to apportion damages.
56. conclusive on all who have notice, &c.
57. Costs of parties, how taxed.
58. Party neglecting to appear, to be barred.

## TOWN WAYS AND PRIVATE WAYS.

59. Town ways, &c., how laid out.
60. how discontinued.
61. Notice to be given by selectmen before laying out.
62. Damage from laying out, &c., how determined and paid.
63. When paid; when party shall have indemnity instead.
64. Damages, if interests are separate.
65. Location, &c., to be filed and accepted before town way, &c., laid out.
66. Commissioners may lay out in certain cases.
67. If selectmen unreasonably refuse, &c., party may appeal to commissioners.
68. Appeal if towns refuse to accept ways.
69. If ways laid out, &c., by commissioners, are not completed in six months, &c., they may complete and assess town.
70. If towns refuse to discontinue, commissioners may.
71. When towns are debarred from laying out, &c.
72. Recognizance for costs. Notice.

[See 1867, 256; 1869, 287, 308; 1870, 260; 1871, 158, 332.]

SECTION 1. When a new highway, from town to town, or from place to place within the same town, is wanting, or when any highway can with greater public convenience be altered or discontinued, application therefor shall be made, by petition in writing to the county commissioners who have jurisdiction in the place in which such new highway or such alteration or discontinuance is wanted.

SECT. 2. No petition for the laying out, altering, or discontinuing, a highway, shall be proceeded upon by the commissioners, until the petitioners cause a sufficient recognizance to be given to the county, with surety to the satisfaction of the commissioners, for the payment of all costs and expenses which shall arise by reason of such petition and the proceedings thereon, if the petitioners shall not finally prevail.

SECT. 3. The commissioners to whom such petition is presented shall cause a copy thereof to be served upon the clerk of every town within which such new highway, alteration, or discontinuance, is prayed for, thirty days at least before the time appointed for any view or hearing. They shall also cause copies of the petition, or abstracts containing the substance thereof, to be posted in two public places in each of said towns, and shall give notice to all persons interested, by causing a like copy to be published three weeks successively in such newspaper as they shall order; the posting and the last publication of the copy to be fourteen days at least before any view, hearing, or adjudication, on such petition.

## SECTION

73. Parties may have jury or committee to ascertain damages; rule as to costs.
74. Owner may remove trees, &c. Not removing, relinquishes right.
75. Jury may extend time for removal.
76. When towns shall not contest legality of ways.

## WAYS IN THE COUNTY OF SUFFOLK.

77. Powers of board of aldermen of Boston.
78. Application for laying out ways, &c., how made.
79. Parties may apply for jury to superior court; view to be granted.
80. Commissioners of Middlesex, powers of, in Suffolk. Warrant for jury, to whom directed. Return of verdict, &c.

## WAYS IN CITIES.

81. Provisions of chapter extend to cities.

## DEDICATION OF WAYS.

82. Ways not chargeable unless regularly laid out.
83. Selectmen, &c., to close such ways, or caution the public, &c.
84. When abutters to grade ways. If they refuse, to be assessed for expense.
85. Grade, how established; plan of, where deposited.
86. Grading of way, not a dedication. Establishment of grade, not an acceptance. Streets not to be obstructed without consent, &c.

## ASCERTAINING LOCATION.

87. If location of way is uncertain, selectmen, &c., to ascertain, &c.

## SECTION OF MONUMENTS.

88. Commissioners, &c., to mark termini and angles of ways. Penalty for neglect.

## WAYS OVER BURYING-GROUNDS.

89. Ways not to be laid out over burying-grounds, unless, &c.
90. Same subject.

1874. 25

Foot ways  
1874. 297  
Highways, how  
laid out.  
R. S. 24, § 1.  
1860, 299.  
7 Mass. 158.  
9 Gray, 57, 186.  
1 Allen, 87.  
6 Allen, 10, 20.  
8 Allen, 21.  
9 Allen, 208.  
11 Allen, 530.  
Recognizance for  
payment of costs,  
&c.  
R. S. 24, § 41.  
18 Pick. 309.

Notice to be given  
to towns, &c.  
R. S. 24, § 2.  
7 Gray, 109.

SECT. 4. They shall view the premises, when they deem it expedient or when requested by any party interested; and, before any view, shall give notice in the manner provided in the preceding section to all persons interested, of the time and place for commencing the same.

Commissioners to view premises, if requested, &c.  
R. S. 24, § 8.  
9 Met. 422.

SECT. 5. They shall hear the parties, either at the time of the view, or at any regular or special meeting, or any adjournment thereof, as they determine; and as soon as may be after the hearing they shall consider and adjudicate upon the common convenience and necessity of laying out, altering, or discontinuing, such highway, as prayed for by the petitioners.

Hearing and adjudication upon common convenience, &c.  
R. S. 24, § 4.  
9 Met. 422.  
11 Allen, 530.

SECT. 6. When they have adjudicated upon the common convenience and necessity of laying out, altering, or discontinuing, a highway, they shall, as soon as may be, proceed to lay out, alter, or discontinue, the same accordingly; first giving such notice thereof as is required before proceeding to view, except that instead of a copy of the whole petition it shall be sufficient to serve and publish an abstract thereof.

Notice before highway is laid out, &c.  
R. S. 24, § 6.  
18 Pick. 309.  
20 Pick. 71.  
22 Pick. 278.  
7 Gray, 109.  
117 m. 416

SECT. 7. They may make such changes between the termini of the highway described in the petition, with regard to the direction, alteration, or discontinuance, thereof, as in their opinion the public convenience requires.

Alterations between termini.  
R. S. 24, § 5.

SECT. 8. If at the time of view, upon a petition for laying out or altering a highway, no person interested shall object, the commissioners may within six months proceed to lay out or alter the same without further notice. If at the time of view upon a petition for discontinuing a highway the commissioners shall decide that the same ought to be discontinued, they may at the same time adjudge and determine that it be discontinued without a further or subsequent meeting therefor, and may estimate the damages caused to any person thereby; and when a return of said proceedings and adjudication is made at the next regular meeting of the commissioners and accepted, it shall be held to be a discontinuance of such highway.

Commissioners may lay out, &c., highways if at time of view no one objects.  
R. S. 24, § 6.  
1839, 76, § 1.  
20 Pick. 71.  
9 Met. 422.  
9 Gray, 57.

SECT. 9. If, upon a petition for laying out or altering a highway, the commissioners, after having viewed the same and heard all persons interested, are of opinion that the existing highway between the termini mentioned in the petition can be so far amended as to supersede the necessity of laying out a new highway or altering the location of existing ways, they may, after due notice to the towns interested, direct specific repairs to be made in the existing ways in such manner as the public convenience requires; and they may apportion the expense of making the same upon the county and towns respectively as in laying out highways.

Upon petition for laying out, &c., highway, commissioners may order specific repairs of existing ways.  
R. S. 24, § 7.  
1 Met. 338.

SECT. 10. At the time of ordering specific repairs upon an existing highway, they may direct it to be closed to the public travel for such time as they may deem reasonable.

Highway may be temporarily closed.  
1839, 90.

SECT. 11. Towns in which specific repairs are ordered to be made shall be liable to make the same, and be entitled to a trial by jury in like manner as is provided in laying out highways.

Towns to make certain repairs.  
R. S. 24, § 8.  
9 Allen, 204.

SECT. 12. When application is made to the commissioners by a town, or by five inhabitants of a town, to locate anew a road within such town, whether the same were laid out by the authority of the town or otherwise, they may, either for the purpose of establishing the boundary lines of such road or of making alterations in the course or width thereof, locate it anew, after giving like notice and proceeding in the manner prescribed in laying out highways. The expense shall be assessed upon the petitioners, or upon the town or county, as the commissioners order.

Existing highway may be located anew.  
R. S. 24, § 9.  
1861, 214.  
11 Cush. 394.  
2 Gray, 274.  
4 Allen, 488.  
117 m. 116

SECT. 13. When a highway is laid out or altered, the commissioners shall in their return determine and specify the manner in which such new highway or alteration shall be made, and also the time within which

Time prescribed for making high.

ways, and for removing trees, &c.  
R. S. 24, § 10.  
1869, 132, § 2.  
3 Mass. 403.  
See 1867, 256.  
1869, 308.

it shall be completed; and shall transmit to the clerks of the several towns in which said highway lies a description of the location and bounds thereof within the limits of such towns respectively, which description shall be recorded within ten days by the clerk in a book of records kept in the town for that purpose. They shall also allow the owner of the land a reasonable time to take off his timber, wood, or trees, which shall be expressed in their return. If he shall not remove the same within the time allowed, he shall be deemed to have relinquished his right thereto for the benefit of the town.

SECT. 14. If damage shall be sustained by any persons in their property, by the laying out, altering, or discontinuing, a highway, the commissioners shall estimate the amount, and in their return state the share of each separately; but they shall not order such damages to be paid, nor shall a person claiming damage have a right to demand the same, until the land over which the highway or alteration is located has been entered upon and possession taken for the purpose of constructing it. But when a person so claiming damages has been put to trouble and expense by the proceedings, the commissioners shall allow him full indemnity therefor, instead of the damages awarded, although no entry is made upon his land.

SECT. 15. When specific repairs are ordered to be made in a highway which occasion damage to any person or property, the commissioners shall estimate the same and make return thereof; and at their first meeting after the repairs are completed, they shall order the damage to be paid. But if the order for repairs does not go into effect, or is rescinded or altered, they shall order only so much of the damage to be paid as in their opinion has been actually sustained.

SECT. 16. In estimating the damage sustained by laying out, locating anew, altering, or discontinuing, a highway, or by an order for specific repairs, regard shall be had to all the damages done to the party, whether by taking his property or injuring it in any manner; and there shall be allowed, by way of set-off, the benefit, if any, to the property of the party by reason thereof.

SECT. 17. When persons having a claim for damages sustained in their property by the laying out, alteration, or discontinuance, of a highway, have different or separate interests in the property, so that an estate for life or for a term of years in the same belongs to one person, and the remainder or reversion in fee belongs to another, entire damages, or an entire sum as indemnity, shall be assessed in the same manner as is provided in other cases, without any apportionment thereof; and the amount of such damages or indemnity shall be paid over to or be recoverable by any person whom the parties owning the several interests may appoint, to be invested by him, when paid over or recovered, in bond, mortgage, or other good securities, and held in trust for the benefit of the parties according to their several interests; the annual income to be paid over to the person in whom was the estate for life or term of years, for the period such estate might have continued, and the remainder after the termination of such estate to be paid over absolutely to the person that was entitled to the reversion in fee, or to his heirs or devisees.

SECT. 18. If any of the persons having an interest in such property shall, by reason of legal disability, be incapacitated from choosing a trustee, or if the parties in interest cannot agree upon a choice, the probate court of the county in which the property is situated, upon application, shall appoint some suitable person as trustee. Said trustee shall before entering upon the duties of his trust give a bond to the judge of probate and insolvency, with sufficient surety or sureties, in such penal sum as the judge directs, conditioned for the faithful performance of his duties as trustee under the provisions of this and the preceding section;

1875-117  
Damages to be estimated, but not paid until &c. Indemnity.  
R. S. 24, § 11.  
1842, 86, § 1.  
22 Pick. 263.  
2 Met. 568.  
10 Met. 465.  
12 Met. 123.  
3 Cush. 81.  
8 Cush. 380.  
2 Gray, 267.  
4 Gray, 537.  
5 Gray, 85, 372.  
3 Allen, 538.  
101 Mass. 439.

Damages occasioned by specific repairs. Indemnity.  
1842, 86, § 2.  
8 Cush. 382.  
2 Gray, 267.

108 Yn. 60  
117 Yn. 363  
Damages.  
R. S. 24, § 81.  
1842, 86, § 2.  
2 Mass. 287.  
5 Met. 372.  
2 Gray, 467.  
4 Gray, 537.  
11 Gray, 28, 416.  
14 Gray, 214.  
2 Allen, 538.

1876c.22  
When claimants have different interests, entire damages or indemnity to be paid to a trustee.  
1861, 290, § 1.  
See §§ 53, 64.  
Ch. 63, § 25.  
106 Mass. 547.  
108 Yn. 535

Trustee in certain cases to be appointed by judge of probate, &c.  
1861, 290, § 2.  
See § 64.  
Ch. 63, § 25.

1874. 388

Cont. Xn. 1875-117



which bond upon breach of its condition may be put in suit by order of the probate court for the use and benefit of the persons interested in the trust property, in like manner as is provided in case of bonds given by executors or administrators.

SECT. 19. (R.) [A party aggrieved by the doings of the commissioners, either in laying out, locating anew, altering, or discontinuing, a highway, or in the estimation of his damages occasioned thereby, or by reason of any specific repairs ordered by the commissioners, or in the sum awarded him as indemnity, may, on application in writing to the commissioners, have a jury to determine the matter of his complaint; unless he agrees with the parties adversely interested to have the same determined by a committee to be appointed under the direction of the commissioners.] 102 Mass. 123. 106 Mass. 140. (R.) *Repeal and substitute.* 1870, 75, 185.

SECT. 20. (R.) [Such jury or committee shall not revise the judgment of the commissioners as to the common convenience and necessity of laying out or altering the way in question; but they may make any alterations that are prayed for between the termini as established, so far as they think them necessary or proper.] (R.) *Repeal and substitute.* 1870, 75, 185.

SECT. 21. (R.) [Applications for a jury to revise the judgment of the commissioners in laying out, locating anew, altering, or discontinuing, a highway, or in ordering specific repairs to be made, may be received and acted upon at the meeting at which the order therefor is adopted, or at the next regular meeting thereafter, but not afterwards.]

SECT. 22. Applications for a jury to revise the judgment of the commissioners in the assessment of damages merely, or in the award of indemnity, may be made at any time within one year from the time of the adoption of the order; or, if within that time a suit shall be instituted wherein the legal effect of the proceedings of the commissioners in laying out, locating anew, altering, or discontinuing, a highway, is drawn in question, such application may be made at any time within one year after the final determination of the suit.

SECT. 23. If two or more persons apply at the same time for joint or several damages or indemnity, they may join in the same petition to the commissioners; and if several applications are pending at the same time before the commissioners for a jury to determine any matter relating to the laying out, alteration, or discontinuance, of a highway, or the assessment of damages or indemnity, they shall cause all such applications to be considered and determined by the same jury; and the costs shall be taxed either jointly or severally, as the court to which the verdict may be returned shall determine to be equitable.

SECT. 24. No jury shall be ordered, nor committee appointed, until the petitioners give recognizance to the county for the payment of all the costs and expenses which may arise in case the jury or committee shall not alter such highway, nor increase the damages or indemnity allowed by the commissioners.

SECT. 25. No petition for a jury shall abate or be defeated by the death of the petitioner; but the executor or administrator, or the heirs or devisees if they shall be the persons interested, may appear and prosecute such petition, or present a new petition, in the same manner and with the same effect as the original party might have done.

SECT. 26. If, upon the death of one or more of several petitioners for a jury, the executors or administrators, heirs or devisees, of such petitioners, after due notice that such petition is pending, neglect to appear or to prosecute, the surviving petitioners may proceed in the same manner as if they only had made the application.

SECT. 27. The warrant for a jury shall be directed to the sheriff of the county or his deputy, who is disinterested, or to a coroner, as the commissioners shall order, requiring him to summon a jury of twelve men to hear and determine the matter of complaint set forth in the

Jury trial.  
R. S. 24, § 13.  
1842, 86, § 8.  
21 Pick. 258.  
22 Pick. 278.  
1 Met. 437.  
12 Met. 123.  
3 Cush. 82.  
4 Cush. 291.  
10 Cush. 151.  
5 Gray, 65.  
1 Allen, 329.  
9 Allen, 204.

Powers of jury.  
R. S. 24, § 13.  
11 Pick. 275.  
22 Pick. 290.  
3 Met. 375.  
5 Gray, 65.

Jury to revise location;  
R. S. 24, §§ 8, 14.  
8 Cush. 350.  
(R.) *Repeal and substitute.*  
1870, 75, 185.

to revise assessment of damages, when to be made.  
R. S. 24, § 14.  
1842, 86, § 8.  
1849, 200.  
1857, 138.  
8 Cush. 362.  
5 Gray, 81.

1874, 341  
117 m. 568

Several applications may be considered by same jury.  
R. S. 24, § 15.  
22 Pick. 281.  
15 Met. 316.  
2 Cush. 346.  
18 Gray, 553.  
102 Mass. 125.

Recognizance for costs in all cases.  
R. S. 24, § 41.  
102 Mass. 121.  
123, 124.

Petitions not to abate by death of parties.  
R. S. 24, § 16.

116 m. 421

Executors, &c., neglecting to appear, survivors may proceed.  
R. S. 24, § 17.

Warrant for jury, *sub. Ct.*  
R. S. 24, § 18.  
11 Pick. 299.  
8 Cush. 59.  
4 Cush. 281. 1875 = 261

petition, and to decide all such matters as shall legally come before them on the hearing.

SECT. 28. The officer who receives the warrant shall in writing require of the selectmen of the three nearest towns not interested in the question, if there be so many in the county, to return a number of jurors, not less than two nor more than six from any one town unless in case of necessity; and the jurors shall be drawn, summoned, and returned, as in other cases, except that the jurors need not be summoned more than twenty-four hours before the time appointed for their attendance.

SECT. 29. If a person so summoned as a juror fails to attend without sufficient cause, he shall pay a fine not exceeding ten dollars, at the discretion of the court to which the verdict is returned, to be paid into the county treasury.

SECT. 30. If by reason of challenges or otherwise there is not a full jury of the persons summoned, the officer who summoned the jury, or in his absence the officer attending the jury, shall return some suitable person to supply the deficiency.

SECT. 31. The jurors shall be sworn to make a just and true appraisal of the damages sustained by the complainant, or of the indemnity to which he is entitled, and well and truly to try all such other matters as shall be lawfully submitted to them under the complaint, and to give a true verdict therein, according to law and the evidence given them; but when no estimate of damages or indemnity is required to be made, that part of the oath shall be omitted.

SECT. 32. The commissioners, when they issue their warrant for a jury, may at the request of either party appoint some suitable person to preside at the trial, in which case the jury may be attended by a deputy-sheriff; but if no person is appointed, the sheriff of such county shall preside; or when the sheriff is interested or unable to attend, a coroner of the county shall preside.

SECT. 33. The person presiding at the trial shall keep order therein, and administer the oath to the jurors and witnesses; shall decide all questions of law arising on the trial which would be proper for the decision of a judge; shall direct the jury upon any question of law, when requested by either party; and shall when requested certify to the court, with the verdict, the substance of any decision or direction by him given.

SECT. 34. When a petition for a jury is presented, the commissioners shall, on behalf of the county, take notice of the same; and may in behalf of the county agree with the petitioners to substitute a committee in the place of a jury, as before provided. They shall, when they think it necessary, appoint some suitable person to attend upon the jury or the committee, as an agent for the county, who shall be allowed therefor three dollars a day and ten cents a mile travel.

SECT. 35. The officer by whom a jury is summoned shall give seasonable notice of the time and place of their meeting to the person appointed to preside at the trial, and also to the person appointed agent for the county, if such appointments have been made. When a committee is substituted for a jury, the notice to the agent shall be given by the person first named on the committee.

SECT. 36.\* The officers shall receive for summoning the jurors four cents a mile for all necessary travel, and one dollar and fifty cents for each day he attends upon them. He shall certify to the court his own travel and attendance, and also that of each juror.

SECT. 37. The jury shall view the premises when they think proper, or upon the request of either party, and shall hear and examine all legal evidence laid before them, with the observations of the parties or their counsel thereon. All the jurors shall sign the verdict which may be

Jury, how and whence summoned.

R. S. 24, § 19.  
18 Met. 316.  
4 Cush. 291.  
6 Allen, 92, 115.  
106 Mass. 303.

Jurors to pay fine for non-attendance.

R. S. 24, § 20.

Talesmen may be returned.

R. S. 24, § 21.

Jurors to be sworn.

R. S. 24, § 22.

Commissioners may appoint person to preside at trial.

R. S. 24, § 23.  
1 Cush. 480.  
2 Allen, 557.

Duties of presiding officer.

R. S. 24, §§ 24, 25.  
11 Pick. 274.  
6 Allen, 100.  
102 Mass. 124.

Commissioners to take notice on behalf of their counties;

may appoint agent to attend jury.

R. S. 24, §§ 26, 27.

Notice of trial.

R. S. 24, § 28.

Officer's fees.

R. S. 24, § 29.  
102 Mass. 124.

1873 c. 204

Duty of jury.

R. S. 24, § 30.

agreed upon, which shall be enclosed in a sealed wrapper, with an indorsement thereon expressing what it contains, and delivered so indorsed to the officer having charge of the jury.

SECT. 38. If the interest or right of a complainant in or to the real estate alleged to be damaged by the laying out, locating anew, altering, discontinuing, or making specific repairs upon, a highway, is drawn in question on such hearing, the jury may hear and determine the question of interest or right so far only as respects the damages of such complainant.

Title of lands determined only as respects damages.  
R. S. 24, § 32.

SECT. 39. A jury assessing damages may extend the time allowed by the commissioners for the owner of the land to take off the timber, wood, trees, or other property. If he neglects to take off the same within the extended time, he shall be deemed to have relinquished his claim thereto for the benefit of the town, as before provided.

Jury may extend time for removing trees, &c.  
R. S. 24, § 38.  
6 Gray, 442.

SECT. 40. When a jury is ordered, they shall be summoned and give their verdict within three months next after the date of the order. The verdict shall be returned to the next term of the superior court to be held for the same county, and the court shall receive it, and adjudicate thereon, and may set it aside for good cause. If the matter is determined by a committee, the report of the committee shall be made within three months after their appointment, shall be returned to the next term of the court held after making the same; and like proceedings shall be had thereon as upon the return of a verdict.

Verdict or report when returned, may be set aside.  
R. S. 24, § 34.  
5 Mass. 435.  
1 Cush. 562.  
8 Cush. 15.  
6 Allen, 98.  
99 Mass. 636.

109 M. 242  
117 M. 563

SECT. 41. If the jury do not agree upon a verdict, or if the proceedings are set aside upon a writ of certiorari, the complainant shall be entitled to a new jury from time to time until a verdict is rendered and established; but he may at any stage of the proceedings, upon such terms as the court shall order, waive his right to a trial by jury and accept the damages assessed by the commissioners.

Complainant entitled to jury until verdict rendered, may waive right to trial, &c.  
R. S. 24, § 35.  
10 Pick. 236.

117 M. 436  
Clerks of courts to certify verdict, &c., to commissioners.  
Proceedings thereon.  
R. S. 24, § 31.  
102 Mass. 128.

110 M. 428

SECT. 42. The clerk of the court shall certify such verdict or report, with the adjudication of the court thereon, to the commissioners at their next meeting after the adjudication shall be had; and if the verdict or report has been set aside, the commissioners, on application therefor, shall order a new jury, or the parties may agree upon a new committee; and thereupon like proceedings shall be had as are herein before provided.

SECT. 43. The verdict or report returned to the court as before provided, and accepted and recorded, shall be conclusive upon the parties.

Verdict, &c., conclusive.  
R. S. 24, § 37.

20 Pick. 206. 1 Cush. 562. 102 Mass. 128.

SECT. 44. If the jury or committee do not alter the highway, nor increase the amount allowed by the commissioners, as damages or indemnity, the costs incurred by reason of the application for the jury or committee shall be paid by the persons who recognize for the payment of costs; otherwise all such costs shall be paid from the county treasury.

Costs, how paid.  
R. S. 24, § 38.  
16 Gray, 256, 259.

SECT. 45. If a question arises with regard to the taxation of costs, in the proceedings and hearing before a jury or committee, it shall be determined by the court to which the verdict or report is returned; and the court may also determine the compensation of the committee and of the person who presides at the trial.

Questions of costs, how settled, &c.  
R. S. 24, § 39.  
102 Mass. 125.

110 M. 413

SECT. 46. When the commissioners order a jury, or a committee is agreed upon, to consider and determine with regard to the laying out, alteration, or discontinuance, of a highway, or specific repairs upon an existing highway, the highway so laid out or altered shall not be opened or worked, nor shall the highway so discontinued, or upon which specific repairs are ordered, be shut up, until after the meeting of the commissioners at which the verdict of the jury or report of the committee, with the adjudication of the court thereon, is certified to them as before directed; and thereupon the commissioners may allow such further time as they think reasonable for making and completing such highway, and

Highways not to be opened or worked or shut up, until, &c.  
R. S. 24, § 40.  
1839, 90.

for the removal of the timber, wood, trees, or other property, if any, from the premises.

Expenses, damages, &c., paid by county.

R. S. 24, §§ 38, 42.  
1842, 86, §§ 1, 2.  
2 Gray, 274.  
9 Allen, 204.  
Expenses paid by petitioners.  
R. S. 24, § 43.  
8 Met. 814.  
16 Gray, 259, 348.

SECT. 47. When a highway is finally laid out, and established, altered, or discontinued, or specific repairs are ordered, on an existing highway, all the expenses of the proceeding, and also all damages allowed therefor, and all sums awarded as indemnity, shall be paid by order of the commissioners by the county, except as herein otherwise provided.

SECT. 48. If a highway is not finally laid out and established, located anew, altered, or discontinued, nor specific repairs ordered, all said expenses shall be paid by the persons who have recognized therefor. If they refuse or neglect to pay such expenses, or to pay the costs incurred by reason of the application for a jury or committee, when required by the commissioners, such expenses or costs shall be ordered by the commissioners to be paid from the county treasury; and thereupon the commissioners, after giving due notice to the persons who so recognized, shall issue a warrant against them or some of them (unless sufficient cause is shown to the contrary) for the amount ordered to be paid by them, with the further costs of the notice and warrant, and the money shall be collected as in other cases, and paid into the county treasury.

Highways, how made when towns neglect; expense charged to towns.  
R. S. 24, § 44.  
5 Greenl. 254.  
16 Gray, 194.  
108 Mass. 125.

SECT. 49. After a highway has been established by the commissioners, if a town whose duty it is to make such highway, or a part thereof, shall not make and complete the same within the time and in the manner prescribed, and to the acceptance of the commissioners, they shall, as soon as may be thereafter, cause such highway to be completed as aforesaid; and at their next meeting they shall direct the expenses and charges of completing the same to be paid out of the county treasury, and shall order notice thereof to be given to each town that is delinquent, stating the proportions which they are respectively required to pay.

Warrants to issue against towns neglecting to pay.  
R. S. 24, § 45.  
See § 69.  
103 Mass. 125.

SECT. 50. If a delinquent town does not pay its proportion of the expenses and charges before the next regular meeting of the commissioners, with interest thereon at the rate of ten per cent. a year from the time the same is paid from the county treasury, the commissioners, unless sufficient cause is shown to the contrary, shall issue a warrant against such town for the sum it was ordered to pay, with the interest, and the further costs of such notice and warrant; and the same shall be collected as in other like cases, and paid into the county treasury.

Expenses may be paid by county.  
R. S. 24, § 46.  
1841, 105, § 1.  
6 Met. 329.

SECT. 51. When a highway is laid out or altered, the commissioners, after the same is completed, may order the whole or part of the expenses incurred by any town in making or altering the same, to be paid out of the county treasury.

Commissioners to certify when highway is completed.  
R. S. 24, § 47.  
13 Pick. 225.

SECT. 52. Upon notice to the commissioners that the part of such highway lying within the limits of a town has been completed according to their directions for making the same, they shall view and carefully examine the same throughout; and if they find such highway well made, they shall so certify to the county treasurer, who shall thereupon pay to such town the sum so allowed.

Several parties may go to the same jury.  
R. S. 24, § 48.  
1851, 250.  
5 Met. 372.  
8 Cush. 81.  
7 Cush. 533.  
10 Cush. 385.

SECT. 53. When there shall be several parties, having several estates at the same time, in land or buildings, other than and different from the estates and interests for which provision is made in section seventeen, and the land or buildings are taken or otherwise damaged, in whole or in part, by the laying out, locating anew, altering, or discontinuing, of a highway, or making specific repairs thereon, and one of such parties, by petition as provided in this chapter, applies for a jury to ascertain his damages in the premises, all the other parties so interested may become parties to the proceedings under such petition, and the damages of all of them may be determined by the same jury, in the manner provided in the five following sections.

1874, 388

108 Mass. 535

SECT. 54. Upon such application of a party thus interested, the commissioners shall order the petitioner to give notice thereof to all the other parties interested, by serving each of them, fourteen days at least before their next regular meeting, with an attested copy of such petition and the order thereon, that the other parties may if they see cause appear at the next meeting and become parties to the proceedings under the petition; and at the next meeting a jury shall be ordered as before provided in this chapter, who shall, under the direction of the person presiding at the trial, proceed to hear all the persons who have become parties to the proceedings.

Notice to persons interested to become parties.  
R. S. 24, § 49.

1874, 388

108 M. 535

115 M. 1

SECT. 55. If on such hearing the jury find any of the parties entitled to damages, they shall assess the same in the following manner, to wit: they shall first find and set forth in their verdict the total amount of the damages sustained by the owners of such land and buildings, estimating the same as an entire estate and as if the same were the sole property of one owner in fee simple; and they shall then apportion the total amount of damages among the several parties whom they find to be entitled, in proportion to their several interests and claims and to the damages sustained by them respectively, and set forth such apportionment in their verdict; and if they find any one or more of said parties not to have sustained damage, they shall set forth in their verdict that they award no damages to such party.

Verdict to apportion damages;  
R. S. 24, § 50.

1874, 387

108 M. 535

115 M. 1

SECT. 56. The verdict, if accepted, shall be conclusive upon all parties interested who shall either have had notice as aforesaid, or by consent have become parties to the proceedings.

conclusive on all who have notice, &c.  
R. S. 24, § 51.

1874, 388

SECT. 57. Each party recovering damages shall recover his several costs; and each party not recovering damages shall be liable for costs to the town or other corporation of which he shall have claimed damages, in like manner as if the proceedings were had under his several petition; but if a party shall fourteen days before the trial give notice in writing to the town or other corporation that may be liable for damages, that he relinquishes all claim for damages, and shall also before the trial file in the case a relinquishment of such claim, he shall not be liable for costs in the case.

Costs of parties, how taxed.  
R. S. 24, § 52.

1874, 388

SECT. 58. If a person, having notice as aforesaid, neglects to appear and become a party to the proceedings in court, he shall be forever barred from making an application for damages.

Party neglecting to appear, to be barred.  
R. S. 24, § 53.

1874, 388

#### TOWN WAYS AND PRIVATE WAYS.

SECT. 59. The selectmen of the several towns may lay out or alter town ways for the use of their respective towns, and private ways for the use of one or more of the inhabitants thereof; or may order specific repairs to be made upon such ways.

Town ways, &c., how laid out;  
R. S. 24, § 56.  
1842, 86.  
7 Cush. 394. 186 M. 202  
4 Allen, 529.

SECT. 60. A town, at a meeting regularly called for the purpose, may discontinue any town or private way.

how discontinued.  
R. S. 23, § 70.  
13 Gray, 260.  
Notice to be given by selectmen before laying out, &c.  
R. S. 24, § 67.  
98 Mass. 491.

SECT. 61. No town way or private way shall be laid out or altered unless, seven days at least previously thereto, a written notice of the intention of the selectmen of the town to lay out or alter the same is left by them, or by their order, at the usual place of abode of the owners of the land over which such way is proposed to be laid out or altered, or unless such notice is delivered to such owner in person or to his tenant or authorized agent. If the owner has no such place of abode in the town, and no tenant or authorized agent therein known to the selectmen, or if, being a resident in the town, he is not known as such to the selectmen, such notice shall be posted up in some public place in the town seven days at least before the laying out of such way.

SECT. 62. If damage is sustained by any person in his property by the laying out, alteration, or discontinuance, of a town or private way,

Damages from laying out, &c.,

how determined  
and paid.  
R. S. 24, § 68.  
1842, 86.  
10 Met. 465.  
Gray, 31.  
11 Allen, 538.

Damages, when  
paid.  
Indemnity;  
1842, 86.  
1847, 250, § 4.  
12 Met. 128.  
9 Gray, 346.  
8 Allen, 538.

If interests are  
separate.  
1861, 290.  
1865, 10.

Location, &c., to  
be filed, &c., be-  
fore laying out.  
R. S. 24, § 69.  
2 Mass. 629.  
2 Greenl. 60.  
8 Greenl. 489.  
9 Pick. 492.  
6 Pick. 146.  
9 Met. 423.  
105 Mass. 535.

Commissioners  
may lay out in  
certain cases.  
1837, 164.

If selectmen un-  
reasonably re-  
fuse, &c., party  
may appeal to  
commissioners.  
R. S. 24, § 71.  
6 Mass. 8.  
8 Met. 312.  
9 Met. 423.  
12 Met. 209.  
7 Cush. 395.  
11 Cush. 189.  
4 Gray, 414.  
9 Gray, 57.

Appeal if towns  
refuse to accept  
ways.  
R. S. 24, § 72.  
8 Greenl. 271.  
2 Mass. 118.  
8 Mass. 188.  
9 Met. 423.  
5 Allen, 13.

If ways laid out,  
&c., by com-  
missioners

or by specific repairs which may be ordered thereon, he shall receive such compensation as the selectmen shall determine, to be assessed and awarded in the manner provided for the assessment and award of damages by county commissioners in laying out highways; which damages shall be paid by the town if it is a town way, but if a private way, then by the person for whose use it is so laid out or altered, or for whose benefit specific repairs are ordered, or on whose application it is discontinued, unless the selectmen deem it reasonable that part of the damage shall be paid by the town and the residue by said persons, in which case they shall make an order specifying the sums to be paid by each.

SECT. 63. The damages so awarded shall not be paid until the land is entered upon and possession taken for the purpose of constructing such way or alteration, or until the specific repairs which have been ordered are commenced. And if possession is not taken, or if the specific repairs are not made, the party, instead of the damages awarded to him, shall be entitled to indemnity to be assessed by the selectmen in the same manner that indemnity is awarded by county commissioners in like cases.

SECT. 64. If there are separate or different interests in lands or buildings which are so taken or injured, of the character and description mentioned in sections seventeen and eighteen, the damages shall be assessed by the selectmen in the mode therein provided for an assessment by the commissioners.

SECT. 65. Except as is hereinafter provided, no town way or private way laid out or altered by the selectmen, shall be established until such laying out or alteration, with the boundaries and admeasurements of the way, is reported to the town, and accepted and allowed at some public meeting of the inhabitants regularly warned and notified therefor, nor unless such laying out or alteration, with the boundaries and admeasurements, is filed in the office of the town clerk seven days at least before such meeting.

SECT. 66. When the location or alteration of a private way is desired in a town for the use of one or more persons, not being inhabitants thereof, or when the location or alteration of a private way lying partly in one town and partly in another is desired, the county commissioners may cause such way to be located or altered, proceeding therein as is provided where the selectmen refuse to lay out a private way.

SECT. 67. If the selectmen of a town unreasonably refuse or neglect to lay out or alter a town way or private way, when requested in writing by one or more of the inhabitants thereof, the commissioners, on the petition in writing of a person aggrieved presented at any regular meeting within one year, may cause such way to be laid out or altered, to ascertain the place and course of the way, and estimate the damages sustained by any person by reason thereof. Such damages with the costs of the proceedings shall be paid by the town, if it is a town way, or if it is a private way, the damages and costs, or such part thereof as the commissioners judge reasonable, shall be paid by the persons for whose use it is laid out or altered, and the residue, if any, by the town.

SECT. 68. If a town unreasonably refuses or delays to allow a town way or private way laid out or altered by the selectmen, and to put the same on record, any person aggrieved thereby may, at any time within one year thereafter apply by petition in writing to the commissioners, and the commissioners, unless sufficient cause is shown against the application, may approve and allow of the way as laid out or altered by the selectmen, and direct the laying out or alteration and acceptance to be recorded by the clerk of such town, which shall have the same effect as if accepted by the town and recorded.

SECT. 69. If a town in which a town way or private way is laid out or altered, or approved, in pursuance of the three preceding sections

not make and complete the same in the manner prescribed by the commissioners, and to their acceptance, within six months from the time when the same is laid out or approved, or within the time directed by the commissioners, they shall, as soon as may be thereafter, cause such way to be completed, and at the next meeting shall direct the expenses and charges of completing the same to be paid out of the county treasury, and order notice thereof to be given to the delinquent town, stating the amount of such expenses and charges. If the town does not before the next regular meeting of the commissioners pay the same, with interest thereon at the rate of ten per cent. from the time when the same was paid by the county treasurer, they [shall] cause the same with all further costs to be collected in the manner prescribed in section fifty.

SECT. 70. Upon the application in writing of any person aggrieved by the refusal of a town to discontinue a town way or private way, the commissioners may order such way to be discontinued.

SECT. 71. When a town way has been laid out or altered by the commissioners, it shall not within two years thereafter be discontinued or altered by the town; and when such way has been discontinued by the commissioners, the town shall not within two years thereafter lay out the same again.

SECT. 72. When an application is made to the commissioners in consequence of the refusal or neglect of selectmen to lay out or alter a private or town way, or in consequence of the refusal or neglect of the town to accept and allow such way when laid out or altered by the selectmen, or when such application is made for the discontinuance of a private or town way, the commissioners shall cause a like recognizance to be given to the county as is directed in this chapter with regard to applications for highways; and like proceedings may be had on such recognizance. They shall also cause notice to be given, before they proceed to view, or to hear the parties, as in the case of highways.

SECT. 73. A person aggrieved by the laying out, or by the alteration or discontinuance, of a town or private way, or by an order for specific repairs, or by the assessment of his damages, or compensation by way of indemnity, may have the matter of his complaint determined by a jury, which may be applied for at any time within one year after such laying out, alteration, order for repairs, discontinuance, or assessment of indemnity; or if a suit is instituted within one year wherein the legal effect of the proceedings is drawn in question, such application for damages or indemnity may be made at any time within one year after the final determination of such suit. Upon such application, an order for a jury shall be made by the commissioners, (or by agreement of the parties the matter may be determined by a committee to be appointed by the commissioners;) and the jury or committee shall have the same powers, and the proceedings in all respects shall be conducted in the same manner, as before provided in like case with respect to highways. If the damages are increased or the way is altered, the damages and all charges shall be paid by the town; otherwise the charges arising on such application shall be paid by the applicant or person recognizing as aforesaid.

SECT. 74. When a town or private way is laid out or altered by the selectmen or commissioners, they shall in their report or return thereof specify the manner in which such way, location, or alteration, shall be completed, and transmit to the clerk a description of the location and bounds thereof, which shall, within ten days, be recorded by him in a book of records kept for that purpose; and they shall allow the owner of the land through which the way may pass, a reasonable time to take off his trees, fences, and other property, which may obstruct the building of such way. If he neglects to remove the same within the time

are not completed within six months, &c., they may complete, and assess town.  
1846, 222, §§ 1, 2

If towns refuse to discontinue.  
R. S. 24, § 73.

When towns cannot lay out, &c.  
R. S. 24, § 74.  
2 Pick. 44.

Recognizance for costs. Notice.  
R. S. 24, § 75.  
9 Met. 422.  
11 Cush. 189.

Parties may have jury or committee to ascertain damages.  
Rule as to costs.  
R. S. 24, §§ 68, 76.  
1842, 86.  
1849, 200.  
8 Met. 312.  
10 Met. 465.  
9 Cush. 245.  
5 Gray, 81, 65, 421.  
9 Gray, 841.  
18 Gray, 558.  
See Ch. 64, § 6.  
103 Mass. 188.

See 1870, 75, § 2.  
116 M. 165  
117 M. 79

Owner may remove trees, &c.; not removing, relinquishes right.  
1848, 98, §§ 1, 2  
1869, 132, §§ 1, 2, 4.  
See § 87.

allowed, he shall be deemed to have relinquished the benefit of the town, if the way be a town way, for the benefit of such person as the jury shall determine.

Jury may extend time for removal.  
1848, 98, § 3.

SECT. 75. If a jury is ordered to assess the location or alteration of such way, they shall require the owner of the land to remove his trees, fence, &c., if he neglects to remove the same within the time specified, he shall be deemed to have relinquished his claim to the way.

Towns not to contest legality of ways.  
R. S. 24, § 77.  
5 Gray, 86.  
9 Gray, 341.

SECT. 76. No town shall contest the location of a way so laid out, accepted and recorded as public.

#### WAYS IN THE COUNTY OF MIDDLESEX

Powers of board of aldermen of Boston.  
R. S. 24, § 54.  
1842, 86.  
1864, 448, § 88.  
102 Mass. 22.  
106 Mass. 97.

SECT. 77. The board of aldermen of the said city have similar powers and perform the duties performed by the commissioners of the county in laying out, altering, and discontinuing, of ways, and assessing damages thereon; and shall assess damages thereon sustained by reason of such laying out, or order for specific repairs, in like manner as commissioners are required to perform.

Applications for laying out, &c., ways, how made.

SECT. 78. Applications for laying out, altering, or discontinuing ways in said city, may be made, and notice thereon, in such manner and under such conditions as may be prescribed by any ordinance of the city for that purpose.

Parties may apply for jury to superior court. View to be granted.  
R. S. 24, § 55.  
1849, 200.  
1859, 198.  
20 Pick. 201.  
12 Gray, 209.  
14 Gray, 214.  
99 Mass. 236.  
106 Mass. 568.

SECT. 79. A party aggrieved by the decision in the cases mentioned in the preceding sections may apply by petition to the superior court, at any time within one year after the passage of the ordinance upon which the application is founded, or assessment of damages or indemnity made, for the final determination of any suit whereof the proceedings of the board of aldermen is drawn in question. The said court shall, after due notice to the parties, hold a hearing at the bar of the court in the same causes are there tried by the jury, and the jury shall view the place in question.

Commissioners of Middlesex, powers of, in Suffolk. Warrant for jury, to whom directed. Return of verdict, &c.  
1861, 336, §§ 1, 2.  
1868, 296.

SECT. 80. The county commissioners shall exercise the same powers and duties in the towns of North Chelsea and Winthrop in relation to highways and other ways, as the commissioners of the county of Middlesex otherwise provided in the charter of the said county. Proceedings may be had for the assessment of damages or indemnity. But in case a jury is applied for in any matter relating to a way, the warrant shall be issued to the sheriff or his deputy, or to a coroner, and the proceedings thereon shall be the same as in other counties. The verdict and report of such committee shall be returned to the court.

#### [WAYS IN CITIES]

[See 1867, 241; 1871,

Provisions of chapter extend to cities.  
8 Allen, 533.  
96 Mass. 498.

SECT. 81. The provisions of the foregoing sections, so far as applicable, shall apply to the several cities as may be otherwise provided by city charter.



DEDICATION OF WAYS.

SECT. 82. No way opened and dedicated to the public use, which has not become a public way, shall be chargeable upon a city or town as a highway or town way, unless the same is laid out and established by such city or town in the manner prescribed by the statutes of the commonwealth.

12 Gray, 419. 1 Allen, 158. 8 Allen, 898.

SECT. 83. The mayor and aldermen and selectmen shall, whenever the public safety demands it, direct and cause the entrances of such ways entering on and uniting with an existing public highway, to be closed up; or may by other sufficient means caution the public against entering upon such ways; and if any such way shall not be closed, or sufficient notice given that the same is dangerous, the city or town shall be liable for damages arising from defects therein in the same manner as if it had been duly laid out and established.

SECT. 84. (S.) [In cities in which the city council, and in towns in which the inhabitants at a legal meeting, have accepted the provisions of this and the two following sections, if a street or way has been or shall

owner thereof, and permitted to has been accepted and laid out its abutting thereon shall grade ie, in such manner as the safety the opinion of the mayor and ie owners of such abutting lots, or and aldermen or selectmen, the street from public use, the cause the same to be graded, and l shall assess the expense thereof shall be judged reasonable. All n the abutting lands in the same ate.]

ermen or selectmen may fix and o opened and used, and cause a ie office of the city or town clerk. upon the lots abutting thereon, d recorded, shall conform to the and the preceding section shall respecting such streets or ways, / or town.]

street or way by the owners of he mayor and aldermen or select- igation of the same to the public ord of the grade, or the grading selectmen, constitute an accept- But no such street or way shall isent of the mayor and aldermen

Ways not charge-  
able unless, &c.  
1846, 203, § 1.  
4 Cusb. 822.  
5 Gray, 73.  
7 Gray, 348.

117 m. 509  
Selectmen, &c.,  
to close such  
ways, or caution  
the public, &c.  
1846, 203, §§ 2, 3.  
8 Allen, 898.  
102 Mass. 489.  
112 m. 362 -

Abutters, when to  
grade ways, to  
be assessed for  
expense, if they  
refuse  
1853, 315, §§ 1, 4.  
(S.) Decided un-  
constitutional.  
1 Allen, 150.

Grade, how es-  
tablished. Plan  
of, where depos-  
ited.  
1853, 115, §§ 1, 2.  
(S.) Decided un-  
constitutional.  
1 Allen, 150.

Grading, not a  
dedication, &c.  
1853, 115, §§ 1, 2,  
3.  
(S.) Decided un-  
constitutional.  
1 Allen, 150.

LOCATION.]

lders represent to the mayor and  
wn, that the exact location of a  
ave jurisdiction, cannot readily  
gation thereof, and if it appears  
after giving the notice required  
roceed to ascertain the correct  
nd file a certificate thereof, for  
four and eighty-eight.

If location of  
way is uncertain,  
selectmen, &c.,  
to ascertain, &c.  
1859, 182, § 4.  
4 Allen, 458.

## ERECTION OF MONUMENTS.

Commissioners,  
&c. to mark ter-  
minal and angles  
of ways. Penalty  
for neglect.  
1848, 192.  
1855, 96.  
7 Gray, 405.

SECT. 88. The county commissioners, mayor and aldermen, and selectmen, shall cause permanent stone bounds not less than three feet long, two feet of which at least shall be inserted in the earth, to be erected at the termini and angles of all roads laid out by them, when practicable; and when not so, a heap of stones, a living tree, a permanent rock, or the corner of an edifice, may be a substitute for such stones; or said bounds may be permanent stone bounds not less than three feet long, with holes drilled therein, and filled with lead, placed a few inches below the travelled part of the street or way, as the officer whose duty it is to cause the same [to be] erected may determine. And if they neglect to establish such monuments after being notified so to do by an owner of land through which any such way is laid out (since the twenty-fifth of April, eighteen hundred and forty-eight) it be a county road, and the city or town if it be a town way, shall pay to the owner of the land the sum of fifty dollars, if that such neglect continues, to be recovered in an action of debt.

## WAYS OVER BURYING-GROUNDS.

Ways not to be  
laid out over  
burying-grounds,  
unless, &c.  
R. S. 24, § 59.

SECT. 89. No highway or town way shall be laid out in, upon, or through, an enclosure used or appropriated to the dead, unless authority to that effect is specially granted by the selectmen or the consent of the inhabitants of the town where situated is first obtained.

Same subject.  
R. S. 24, § 60.

SECT. 90. No highway or town way shall be laid out in, upon, or through, such part of an enclosure belonging to the proprietors, as may be used or appropriated to the burial of the dead, unless the consent of such proprietors is first obtained there.

## CHAPTER 44.

## OF THE REPAIRS OF WAYS AND BRIDGES.

## PUBLIC WAYS AND BRIDGES.

## SECTION

1. Ways and bridges to be repaired at expense of town.
2. When several towns to repair bridge, commissioners may make orders. How enforced.
3. Towns to vote sums to be paid in labor and materials.
4. Highway tax may be raised in money.
5. Non-residents, how assessed.
6. Selectmen to assign surveyors' limits.
7. Surveyor to give notice. Party taxed may work, &c.
8. Surveyor may remove obstructions.
9. Fence, &c., to prevent spreading of disease, not to be removed.
10. Surveyors not to turn water-courses so as to inconvenience, &c.
11. Surveyors may contract for repairing ways.
12. Surveyors may be authorized to collect taxes in money.
13. Surveyor's power when sum voted is deficient, or not paid.
14. If towns neglect to raise money, surveyor with consent of selectmen may repair at town's expense.
15. Unless town shall otherwise determine, two-

## SECTION

- thirde the tax to be
- Manner in which tax
- ceeding year.
16. Penalty for not acco
17. Tax of delinquents
18. Surveyor to pay o
- alty.
19. Towns to pay da
- pairs.
20. Petitioner aggrieved
- agree with adverse p
21. Fine to use of exec
- causing loss of life.
22. Damages for injur
- covered of town, &
- tion
23. Party liable may be
24. Penalty on towns &
25. Fines imposed, ap
- cept, &c.
26. Location not to be
- made within six year

## PRIVATE WAYS

27. Four or more prop
28. General powers and
- surveyor.

111 M. 294  
Grain bridges  
1876 § 122

SECTION  
29. Penalty on proprietor neglecting to comply with votes.  
30. Penalty for refusing to serve as surveyor.  
31. Forfeitures, how applied.

SECTION  
32. Proprietors may contract for repairs, and raise money for such contracts.  
33. Surveyors may collect taxes.  
34. Penalty on surveyor for neglect.  
35. Chapter to apply to cities, except, &c.

PUBLIC WAYS AND BRIDGES.

[See 1868, 264; 1869, 237; 1871, 168.]

SECTION 1. Highways, town ways, streets, causeways, and bridges, shall be kept in repair at the expense of the town, city, or place, in which they are situated, when other provision is not made therefor, so that the same may be safe and convenient for travellers with their horses, teams, and carriages, at all seasons of the year. 14 Gray, 242.

16 Gray, 229. 1 Allen, 182. 6 Allen, 20, 449. 8 Allen, 51. 102 Mass. 496. 108 Mass. 183. 106 Mass. 472.  
SECT. 2. When two or more towns are required by law to maintain or keep in repair a bridge upon a highway or town way, and differ as to the mode or time of doing the same, the county commissioners having jurisdiction to lay out highways in either of such towns to whom application is first made by one of the towns, may, after a hearing upon due notice to all parties interested, pass such orders concerning the maintenance and repair of such bridge as in their opinion the public good may require. Such orders shall be final, and shall be enforced in the same manner as other orders by the commissioners are by law enforced.

SECT. 3. (S.) [Towns shall vote such sums to be paid in labor and materials on the highways and town ways, as are necessary; and the assessors shall assess the same on the polls and estates, real and personal, of the inhabitants, residents and non-residents, of their town, as other town charges are by law assessed; and shall deliver to each surveyor a list of the persons within his limits, and the sums at which they are severally assessed.]

SECT. 4. Towns may vote to raise such sums of money as are necessary for making and repairing highways and town ways; and order that the same be assessed upon the polls and estates of the inhabitants, residents and non-residents, as other town charges are assessed; and the same shall be collected as other town taxes are collected.

SECT. 5. The lands of non-resident proprietors shall be taxed for the making and repairing of highways in the same manner as for other town taxes; and upon default of payment, the same proceedings shall be had as are provided for the collection of other town taxes of such persons.

SECT. 6. The selectmen of every town having more than one surveyor of highways, shall annually in writing before the first day of May, assign to each surveyor the limits and divisions of the highways and town ways to be kept in repair by him.

SECT. 7. The surveyor shall give reasonable notice, as directed by the town to each person in his list, of the sum he is assessed to the highways and town ways; and to the inhabitants within the limits of his district, assessed as aforesaid, seven days' notice of the times and places he shall appoint, extraordinary casualties excepted, for providing materials and working on the highways and town ways; and each inhabitant shall have an opportunity to work thereon, in person or by his substitute, or with his oxen, horses, cart and plough, at the prices which the town shall allow to such labor, to the full amount of the sum at which he is assessed; but if any person so assessed pays to the surveyor in money the sum assessed to him, the surveyor shall according to his best judgment carefully expend the sum so paid in repairing said ways.

SECT. 8. Surveyors of highways, except as is provided in the following section, and in sections six and nine of chapter forty-six, may cut down or lop off trees and bushes, and dig up and remove whatever obstructs or encumbers a highway or town way, or hinders, incommodes,

Ways and bridges to be repaired at expense of town.  
R. S. 25, § 1.  
18 Gray, 61, 346, 608.

Where several towns are to repair bridge.  
1862, 238, §§ 1, 2, 3.  
2 Allen, 81, 653.  
8 Allen, 245.  
11 Allen, 320.  
12 Allen, 668.  
103 Mass. 186.

Towns to vote sums to be paid in labor and materials.  
R. S. 25, § 8.  
(S.) See substitute.  
1871, 298.  
18 Gray, 325, 347.

Highway tax may be raised in money.  
R. S. 25, § 9.

Non-residents, how assessed.  
R. S. 25, § 20.

Selectmen to assign surveyors' limits.  
R. S. 25, § 7.  
4 Pick. 149.

Surveyor to give notice.  
Party taxed may work, &c.  
R. S. 25, § 11.  
1833, 30.  
See § 17.  
18 Gray, 321.

Surveyor may remove obstructions.  
R. S. 25, § 3.  
18 Pick. 343.  
11 Gray, 342.



SECT. 17. At the expiration of his term the surveyor shall render to the assessors a list of such persons as have neglected or refused to work out or otherwise pay their highway tax, when required by him as provided in section seven; and such deficient sums shall be collected and paid into the treasury like other town taxes.

SECT. 18. If any money remains unexpended in the hands of a surveyor at the expiration of his office, he shall pay the same to the town treasurer; who, after demand, may recover the same in an action of contract for money had and received, with twenty per cent. in addition thereto, to the use of the town.

SECT. 19. When an owner of land adjoining a highway or town way sustains damage in his property by reason of any raising, lowering, or other act, done for the purpose of repairing such way, he shall have compensation therefor, to be determined by the selectmen or mayor and aldermen; with whom he shall file his petition therefor after the commencement, and within one year from the completion of the work; and who shall finally adjudicate upon the question of damages within thirty days after the filing of the petition therefor, unless the parties agree in writing to extend the time. The benefit, if any, which the complainant may receive by reason of such alteration or repair, shall be allowed by way of set off.

SECT. 20. If the petitioner is aggrieved, either by the estimate of his damages or by a refusal or neglect to estimate the same, he may, within one year from the expiration of said thirty days, apply for a jury, and have his damages ascertained in the manner provided where land is taken in laying out highways. Or he may, by agreement with the adverse party and upon application made within the same time, have them ascertained by a committee to be appointed, in the city of Boston by the superior court, and elsewhere by the county commissioners in their respective jurisdictions.

SECT. 21. If the life of a person is lost by reason of a defect or want of repair of a highway, town way, causeway, or bridge, or for want of suitable rails on such way or bridge, the county, town, or person, by law obliged to repair the same, shall be liable to a fine of one thousand dollars, to be recovered by indictment to the use of the executor or administrator of the deceased person, for the benefit of his heirs, devisees, or creditors: *provided*, that the county, town, or person, had previous reasonable notice of the defect or want of repair of such way or bridge.

SECT. 22. If a person receives or suffers bodily injury, or damage in his property, through a defect or want of repair, or of sufficient railing in or upon a highway, town way, causeway, or bridge, he may recover, in an action of tort, of the county, town, place, or persons, by law obliged to repair the same, the amount of damage sustained thereby, if such county, town, place, or persons, had reasonable notice of the defect, want of repair, or of sufficient railing, or if the same had existed for the space of twenty-four hours previous to the occurrence of the injury or damage. But no such damage shall be recovered by a person whose carriage and load thereon exceed the weight of six tons.

11 Gray, 142, 154, 157. 13 Gray, 61. 14 Gray, 248. 2 Allen, 552. 3 Allen, 374, 402, 407. 4 Allen, 557. 5 Allen, 98. 8 Allen, 51. 10 Allen, 147. 11 Allen, 318. 12 Allen, 536. 97 Mass. 258, 268, 272, 273, 431. 98 Mass. 80. 100 Mass. 50, 136, 256. 101 Mass. 98, 99, 193, 315. 102 Mass. 329, 528. 103 Mass. 509, 530, 541. 104 Mass. 24, 75, 78, 84. 105 Mass. 80, 82, 310, 312, 470, 473. 106 Mass. 271, 276, 278, 450.

SECT. 23. If, before the entry of an action provided for in the preceding section, the defendant tenders to the plaintiff the amount which he would be entitled to recover, together with all legal costs, and the plaintiff does not accept the same, and does not recover upon the trial more than the sum so tendered, the defendant shall recover his costs.

SECT. 24. If a town neglects to repair any of the ways or bridges which it is by law obliged to keep in repair, or neglects to make the same safe and convenient when encumbered with snow, such town shall pay such fine as the court in its discretion may order.

Tax of delinquents to be collected in money.  
R. S. 25, § 12.

Surveyor to pay over surplus.  
Penalty.  
R. S. 25, §§ 17, 18.

Towns to pay damages occasioned by repairs.  
R. S. 25, § 6.  
1869, 67.

1 Pick. 418. 109 m. 123  
2 Met. 599.  
8 Met. 179.  
8 Cush. 69.  
10 Cush. 411.  
5 Gray, 372.  
8 Gray, 409.  
18 Gray, 601.  
14 Gray, 216, 218.  
15 Gray, 483.  
104 Mass. 16.  
106 Mass. 85.

Petitioner aggrieved may apply for jury, or, &c.  
1869, 67.  
14 Gray, 216, 218.

If life is lost through defect, &c., executor may recover \$1000.  
R. S. 25, § 21.  
105 Mass. 599.

Damages for defect of ways.  
R. S. 25, § 22.  
1838, 104.  
1850, 5, § 1.  
19 Pick. 147.  
8 Met. 388.  
18 Met. 292, 297.  
1 Cush. 443, 451.  
2 Cush. 600.  
4 Cush. 310.  
6 Cush. 141.  
7 Cush. 490.  
11 Cush. 568.  
5 Gray, 161.  
7 Gray, 100, 104.  
9 Gray, 386.

Party liable may tender, &c.  
R. S. 25, § 23.  
7 Cush. 681.

Penalty on towns for neglect, &c.  
R. S. 25, § 24.  
13 Pick. 343.  
12 Allen, 536.  
101 Mass. 260.  
103 Mass. 133.

116 m. 543

117 m. 509  
1876-2251  
Refused  
4. 1877  
4. 234  
\$6.  
108 m. 583  
117 m. 120  
107 m. 339, 347  
283, 446  
59  
110 m. 21  
9. 135, 305  
334, 575  
506, 574  
520, 522  
116 m. 4  
187622

## REPAIRS OF PRIVATE WAYS .

r. 25. Except in cases where it is imposed on a town for deficiencies in time, shall be appropriated to the repairs; and the court imposing such fine shall appoint a person to superintend the collection and make a return of their doings therein.

r. 26. If on the trial of an indictment for damages for an injury received by reason of a defect in a highway, town way, causeway, or bridge, such county, town, or person, against whom such suit is brought, has, at any time within six years before such injury, made repairs on such highway, town way, or bridge, such county, town, or person shall not deny the location of the defect.

## PRIVATE WAYS AND BRIDGES.

r. 27. When four or more persons are the proprietors and occupants of a private way or bridge, and three of them make application in writing to a justice of the peace to call a proprietors' meeting, the justice may issue his warrant therefor, setting forth the time, place, and purpose, of the meeting; which shall be posted up in some public place of the town where such way or bridge is situate, seven days at least before the time appointed for the meeting.

r. 28. The proprietors and occupants so assembled shall choose a surveyor, who shall be sworn. They may determine by a majority of those present the manner of calling future meetings; what repairs of the way or bridge are necessary; and the proportion of money, labor and materials to be furnished by each proprietor and occupant for such repairs. The surveyor shall have the like powers with respect to such ways or bridges as are exercised by surveyors of highways.

r. 29. A proprietor or occupant refusing or neglecting to comply with such vote when required by the surveyor, shall be held to pay him the amount of his proportion in money, with ten per cent. interest thereon, in any action of contract.

r. 30. If a person so chosen refuses or neglects to accept that office and take the oath, he shall forfeit the sum of five dollars, to be levied in the manner provided for the like neglect or refusal of a surveyor of highways.

r. 31. Damages and forfeitures recovered under the provisions of the two preceding sections shall be applied to the use of the proprietors in repairing said ways or bridges.

r. 32. The proprietors and occupants may, at a legal meeting for that purpose, authorize any person to contract by the year, or for a year or shorter time, for making and keeping in repair such private ways or bridges; may vote to raise such sum of money as they may deem necessary for carrying such contracts into effect; and may choose assessors who shall assess each proprietor and occupant for his proportion of such sum, according to his interest in such way or bridge, and deliver the lists of such assessments to the surveyor, with proper warrant of distress, in substance as is prescribed by law for collecting town taxes.

r. 33. The surveyor may levy and collect such taxes in the same manner as surveyors of highways are empowered to collect highway taxes.

r. 34. If a surveyor neglects or refuses to pay over according to the direction of his warrant the moneys so collected, he shall be liable to the same penalties as are provided for a like neglect or refusal of a surveyor of highways to pay over moneys to the town treasurer.

r. 35. The provisions of this chapter shall apply to cities except otherwise provided in their charters or acts in amendment thereof.

# CHAPTER 45.

[See 1867, 242; 1870, 314; 1872, 84.]

## OF REGULATIONS AND BY-LAWS RESPECTING WAYS AND BRIDGES.

### GUIDE POSTS.

- SECTION**
1. Towns to erect and maintain guide posts.
  2. Selectmen to report locations, &c. Penalty.
  3. Towns to determine places for posts. Penalty.
  4. Posts to be erected at places, with guide boards.
  5. Penalty for neglect to erect posts.

### SIDEWALKS.

6. Sidewalks, how constructed. Penalty for riding, &c., over. Surveyor's authority. Cities.

### SECTION

7. Sidewalks, when selectmen, &c., may grade, &c. Expense, how paid.
8. not to be obstructed, unless, &c.
9. Removal of snow, &c., from, in cities.

### BY-LAWS.

10. By-laws to prevent pasturing cattle in highways.
11. to regulate travel over certain county bridges.
12. over certain town bridges.
13. over incorporated bridges.
14. No penalty incurred unless by-laws are posted up.

### GUIDE POSTS.

**SECTION 1.** Every town shall in the manner provided in this chapter, erect and maintain guide posts on the highways and other ways within the town, at such places as are necessary or convenient for the direction of travellers.

**SECT. 2.** The selectmen of each town shall submit to the inhabitants at every annual meeting a report of all the places in which guide posts are erected and maintained within the town, and of all places at which in their opinion they ought to be erected and maintained. For each neglect or refusal to make such report they shall severally forfeit the sum of ten dollars.

**SECT. 3.** Upon the report of the selectmen, the town shall determine the several places at which guide posts shall be erected and maintained, which shall be recorded in the town records. A town which neglects or refuses to determine such places, and to cause a record thereof to be made, shall forfeit the sum of five dollars for every month during which it neglects or refuses so to do; and in such case, upon any trial for not erecting or maintaining guide posts reported to be necessary or convenient by the selectmen, the town shall be estopped from alleging that such guide posts were not necessary or convenient.

**SECT. 4.** At each of the places determined by the town there shall be erected a substantial post of not less than eight feet in height, near the upper end of which shall be placed a board or boards, and upon each board shall be plainly and legibly painted or otherwise marked the name of the next town or place, and such other town or place of note as the selectmen think proper, to which each of such roads leads, together with the distance or number of miles to the same; and also the figure of a hand, with the forefinger thereof pointing towards the towns or places to which said roads lead: *provided*, that the inhabitants of any town may at their annual meeting agree upon some suitable substitute for such guide posts.

**SECT. 5.** Every town which neglects or refuses to erect and maintain such guide posts, or some suitable substitutes therefor, shall forfeit annually the sum of five dollars for every guide post which it so neglects or refuses to maintain.

### SIDEWALKS.

[See 1867, 242.]

**SECT. 6.** A person owning or occupying lands adjoining a highway or road in a town, may construct a sidewalk within such highway or road, and along the line of such land, indicating the width of such side-

Towns to erect and maintain guide posts. R. S. 26, § 28.

Selectmen to report locations, &c. Penalty. R. S. 26, § 29.

Towns to determine places for posts. Penalty. R. S. 26, § 30.

Posts to be erected at places, with guide boards. R. S. 26, § 31.

Penalty for neglect to erect posts. R. S. 26, § 32.

Sidewalks, how constructed. Penalty for riding, &c., over.

*Carrington Office 1874. 225*





PTER 46.

WAYS AND OTHER PUBLIC PLACES, AND  
MENTS THEREON.

	SECTION
gh-	6. Shade trees may be planted in highways; how removed.
ken	7. penalty for injuring, &c.
	8. owner of beast damaging, liable, &c.
ys,	9. may be set out at public expense, when, &c. Sums to be appropriated.

or fences have been erected and con-  
rs, fronting upon or against a training  
ling place, highway, private way, street,  
h of time or otherwise the boundaries  
; be made certain by the records or by  
ags shall be deemed and taken to be the  
such boundaries can be made certain,  
years, shall justify the continuance of  
private way, or on a highway, training  
, or other land appropriated for the gen-  
abitants of the commonwealth, or of a  
e same may upon the presentment of  
sance.

me prescribed in the preceding section  
he thirty-first day of December in the  
and thirty-nine.

nce, or other encumbrance, erected or  
way, or on a highway, training field,  
other land appropriated for the general  
bitants of the commonwealth, or of a  
ed a nuisance and ordered to be abated,  
hereon by auction, shall be insufficient  
rosecution and removal, the court may  
aised and levied from the goods and  
f erecting or continuing such nuisance.  
ie down and remove gates, rails, bars,  
way, unless the same have been there  
ng the spreading of a disease dangerous  
en erected or continued by the license  
f the selectmen of the town; in which  
aking down and removal may apply to  
respectively, who may order the same

ils, or bars are upon or across a town  
be removed by the order of a justice of  
re placed for the purpose of preventing  
rous to the public health, or unless the  
license of the town, or of the person  
was laid out; and a person aggrieved  
ie commissioners; and if upon exami-  
vere erected or continued by license as  
l order them to be replaced.

dermen, selectmen, or any municipal  
n the care of the streets or roads may  
planting of shade trees therein, wher-

Fences, &c.,  
when deemed  
boundaries of  
highways, &c.  
R. S. 24, § 61.  
17 Pick. 809.  
8 Met. 578.  
18 Met. 115.  
11 Cush. 487.  
4 May 215  
3 All. 349  
6 All. 20  
8 All. 473  
107 m. 234  
110 m. 529

Limitation.  
R. S. 24, § 62.  
107 m. 234

When building  
adjudged a nu-  
sance is taken  
down, sold, &c.  
Costs.  
R. S. 24, § 63.

Gates, rails, &c.,  
on highways,  
how and when re-  
moved.  
R. S. 25, § 27.  
10 Mass. 71.

8 All. 473

on town or pri-  
vate ways, how  
removed.  
R. S. 25, § 43.

Shade trees may  
be planted in  
highways, &c.

Shade trees, how removed;  
1856, 256, § 1.

See Ch. 44, § 8.

Ch. 45, § 6.

1867, 242.

1869, 381.

97 Mass. 472.

99 Mass. 597.

1875-174

penalty for in-

juring, &c.;

1856, 256, § 2.

See 1867, 242, § 2.

owner of beast  
damaging, liable,  
&c.,

1859, 261.

100 Mass. 267.

may be set out  
at public expense,  
when, &c. Sums  
to be appropri-  
ated.

1867, 115, §§ 1,

2, 3.

See Ch. 44, § 8.

1875-174

ever it may not interfere with the public travel or with private rights; and shade trees standing and trees planted pursuant to such license shall be deemed and taken to be the private property of the person so planting them, or upon whose premises they stand or are planted, and shall not be deemed a nuisance; but upon complaint made to the mayor and aldermen, or selectmen, they may cause such trees to be removed at the expense of the owner thereof, if the public necessity seems to them so to require.

SECT. 7. Whoever wantonly injures, defaces, tears, or destroys, an ornamental or shade tree, or shrub, statue, fountain, vase, or other plant or fixture of ornament or utility, in a street, road, square, court, park, public garden, or other enclosure, shall forfeit not less than five nor more than one hundred dollars, to be recovered by complaint, one-half to the complainant and the other half to the use of the person upon whose property, or within whose premises, the trespass was committed.

SECT. 8. Whoever negligently or carelessly suffers any horse or other beast driven by or for him, or any beast belonging to him and lawfully on the highway, to break down, destroy, or injure any tree not his own, standing for use or ornament on said highway, or negligently or wilfully by any other means breaks down, destroys, or injures any such tree, shall be subject to an action for damages, at the suit of the owner or tenant of the land in front of which the tree stands.

SECT. 9. In a city in which the city council, and in a town in which the inhabitants, have accepted this section, the mayor and aldermen or selectmen may set out and maintain shade trees upon the public squares and highways, at the expense of such city or town, which may appropriate annually, for that purpose, a sum not exceeding twenty-five cents for each of its ratable polls in the year next preceding that in which such appropriation is made.

## CHAPTER 47.

### OF FERRIES.

#### SECTION

1. Ferryman to be licensed by commissioners.
2. Tolls to be established by commissioners. Ferryman to give bond.
3. Safe boats to be kept at ferries, &c. Penalty.
4. Remedy for persons sustaining damage through negligence of ferrymen.

#### SECTION

5. Penalty for keeping ferry without authority.
6. When towns to maintain ferry.
7. When two towns shall bear expense jointly.
8. Penalty for neglect.

Ferryman to be  
licensed by com-  
missioners.

R. S. 26, §§ 1, 2.

Tolls to be estab-  
lished by commis-  
sioners. Ferry-  
men to give bond.

R. S. 26, § 2.

Safe boats to be  
kept at ferries,  
&c.

SECTION 1. No person shall keep a ferry and receive pay, unless he first obtains a license therefor from the county commissioners. Such license may be granted to suitable persons for such time as the commissioners think proper, and they may revoke it when necessary.

SECT. 2. The commissioners shall establish the fares or to ferry for passengers, horses, carriages, and other things, transported, always having regard to the length and situation of and the number of persons passing the same; and in all cases bond with sufficient sureties of each ferryman for the faithfulness of his duty. But this and the preceding section shall not apply to ferries established by law prior to the thirtieth day of April in one thousand eight hundred and thirty-six.

SECT. 3. Every ferryman shall keep a safe and good boat, in good repair, adapted to the waters where they are to be used

give ready attendance on passengers on all occasions, according to the regulations established for his ferry. For every neglect in keeping such a boat, or in giving such attendance, he shall forfeit a sum not exceeding twenty dollars, and be further liable in an action of tort for such damages as any person sustains by such neglect.

SECT. 4. Whoever sustains an injury by the negligence or default of a ferryman may have a remedy by an action upon the bond required in this chapter; and in such action like proceedings may be had as in actions brought on the bonds of sheriffs.

SECT. 5. Whoever without lawful authority keeps a ferry and demands or receives pay or toll therefor, shall forfeit a sum not exceeding five dollars for every day that he keeps such ferry, and be further liable in an action of tort for such damages as are thereby occasioned to any person authorized to keep an established ferry.

SECT. 6. When the commissioners judge it necessary to establish a ferry, and no person appears to keep the same for the stated profits thereof, the town where such ferry may be shall provide one or more suitable persons to keep and attend the same at such place and in such times of the year as the commissioners order, which persons shall be licensed as aforesaid; and the expense of maintaining such ferry, beyond the amount received for tolls, shall be paid by the town.

SECT. 7. If such ferry is established between two towns, they shall maintain the same, either jointly or alternately, as the commissioners shall order.

SECT. 8. A town neglecting to maintain a ferry as provided in the two preceding sections, shall forfeit for each month's neglect a sum not exceeding one hundred dollars.

Penalty.  
R. S. 26, §§ 3, 4.

Remedy for damage by default of ferryman.  
R. S. 26, § 5.  
8 Gray, 647.

Penalty for keeping ferry without authority.  
R. S. 26, § 6.

When towns to maintain ferry.  
R. S. 26, § 7.

When two towns to bear expense.  
R. S. 26, § 8.

Penalty for neglect.  
R. S. 26, § 9.

1874, 265

## CHAPTER 48.

### OF SEWERS AND DRAINS.

#### SECTORS

1. Board of aldermen in Boston may lay and repair sewers and drains.
2. Land to be taken and damages appraised as in laying out highways.
3. In towns which shall accept, &c., main drains and sewers may be laid.
4. Persons entering their drains into the main drain to be assessed, &c.
5. Such assessments to constitute a lien.
6. Party aggrieved may have jury. To file specification of objections.
7. Town may provide that part of expense shall be paid by town, &c. In Boston, not less than one quarter to be so paid.

#### SECTIONS

8. Highways, streets, &c., not to be dug up to lay drains, &c., without consent of selectmen.
9. Drains, &c., how to be constructed.
10. Persons benefited to share expense of making drains, repairing, &c.
11. to share expense of removing obstructions, &c.
12. refusing to pay their proportions, shall pay double the amount, &c.
13. Notice to be given before opening any drain.
14. Provisions not to affect agreements of parties.

1874, 283

SECTION 1. (R.) [The board of aldermen of the city of Boston may lay, make, and maintain, in said city, all such main drains or common sewers as they shall adjudge to be necessary for the public convenience or the public health, and may repair the same from time to time whenever it is necessary.]

SECT. 2. (R.) [When land is taken by virtue of the preceding section, the board shall proceed in the manner required by law in taking land for public highways or streets; and persons suffering damage in their property shall have the rights and remedies for the ascertainment and the recovery of the amount of such damage provided by law for the

Board of aldermen in Boston may lay drains.  
1867, 226, § 1.  
(R.) *Repeal and substitute.*  
1869, 111.

Land to be taken and damages appraised.  
1867, 226, § 2.  
(R.) *Repeal and substitute.*  
1869, 111.

## SEWERS AND

and recovery of damage  
ic highways or streets.]

) [In any city or town  
he statutes of eighteen  
ling to the provisions  
the three following se  
city council, and in a  
y the legal voters at a  
aldermen of the city an  
tain, and repair, all mai  
ins or common sewers

very person who enters l  
on sewer, or who, by mo  
ining his cellar or land  
rt of the charge of mak  
essed, and certified, by t  
e thereof shall be given

essments so made shu  
l for one year after they  
and expenses, be levied  
in three months after  
on the person assessed  
le to be conducted in  
ea.

person aggrieved by s  
months from receiving  
on shall be made in li  
e the same as in case  
vided, that before maki  
h's notice in writing  
is intention so to appl  
ctions to the assessmen  
l be confined upon the  
othing herein contained  
rdinance or otherwise,  
taining, and repairing,  
y such city or town. A  
er part of such expense  
upon those using the  
hoever digs or break  
in any town, for the l  
on sewer, without the c  
t five dollars for each o  
l drains and common s  
y made or repaired w  
t, and in such manner, a  
t.

When a person, by the  
n, at his own charge, m  
the benefit of himself  
person who afterwards  
y any more remote mea  
cellar or land, shall p  
drain, a proportional p  
ame, to be determined  
their hands; saving a  
mination the right to s

er or main drain is stopped or gone open the same in order to repair it  
 ons benefited by such repair or re-  
 who do not as those who do cause  
 tion to be removed, shall pay to the  
 proportional parts thereof, to be de-  
 ng section.  
 red to pay his proportional part of  
 drain or common sewer, shall have  
 n to whom the same is to be paid;  
 ys after such notice, pay the same to  
 nen to receive it, he shall be held to  
 the selectmen as aforesaid, with all  
 ; and the person so authorized by  
 in an action of contract in his own

Persons benefited  
by drains to share  
expense of remov-  
ing obstructions,  
&c.  
R. S. 27, § 4.

refusing to pay  
their proportions,  
shall pay double  
the amount, &c.  
R. S. 27, § 5.

n to open a common sewer or main  
 the same, shall, seven days at least  
 give notice to all parties interested,  
 he selectmen may direct, that such  
 object thereto and state their objec-  
 ne selectmen; and if the selectmen  
 parties making the same shall not  
 xpenses; but if they do not make  
 thin three days after such notice, or  
 reasonable, the selectmen shall in  
 ty to the persons applying, to open  
 and to clear and repair the same;  
 hall pay their proportions to be de-

Notice to be  
given before  
opening any  
drain.  
R. S. 27, § 6.

this chapter shall affect any cove-  
 prietors of such drains or common

Agreements of  
owners not af-  
fected.  
R. S. 27, § 7.

## XIII.

### TRADE IN CERTAIN CASES.

sale of Provisions and other Merchandise.  
 s, and Hawkers and Pedlars.

es.

ge.

of Exchange and Promissory Notes.  
 and Factors.

s.

se of Trade-marks and Names.



SECTION

87. Fees.

88. Penalty for fraud in culling.

HOPS.

89. Inspector-general to give bond.

90. to appoint deputies.

91. No hops to be exported without inspection, except, &c.

92. Quality, and how packed.

93. How inspected, sorted, and branded; fees.

94. Inspector's return.

95. Penalty for delay of inspectors.

96. for fraud.

97. for shifting contents of bags.

98. for altering or counterfeiting marks.

99. for intermixing hops after inspection.

100. for exporting uninspected hops.

101. Hops when forfeited.

102. shipped coastwise, &c.

LEATHER, BOOTS, &c.

103. Inspector-general to give bonds.

104. Deputies to be appointed, who shall give bonds.

105. Leather to be weighed and stamped.

106. Same subject.

107. Fees.

108. Sole and belt leather not to be sold until inspected, weighed, and sealed, except, &c.

109. Penalty for buying or selling leather not inspected.

110. for counterfeiting, &c., inspector's marks.

111. when weight varies five per cent.

112. Appointment of measurers of upper leather.

113. Duty of measurers.

114. Fees.

115. Penalty for counterfeiting measurer's marks.

116. Manufacturers of boots, shoes, &c., may stamp their articles; such stamp a warranty.

117. Penalty for fraudulently stamping.

LIME AND LIME CASKS.

118. Inspectors of lime may be chosen; to be sworn.

119. Casks, how branded.

120. Fees.

121. Quality of lime and casks.

122. Description of casks for Maine lime. Same rules, &c., except as to size of casks.

123. Penalty for selling in other casks, &c.

124. Forfeitures.

125. Penalty for shifting contents of casks.

LUMBER, ORNAMENTAL WOOD, AND SHIP TIMBER.

126. Surveyor-general of lumber for Suffolk and vicinity appointed by governor, to give bond, &c.

127. to appoint deputies. Not to deal in lumber.

128. to receive applications and direct surveys.

129. to keep record of surveys, fees, &c.

130. to make annual return to secretary.

131. Surveyors of lumber, appointment of.

132. duties of.

133. Boards and planks.

134. Joists and dimension timber.

135. Spruce, hemlock, juniper, southern pine, &c.

136. Ash, maple, &c., boards, &c.

137. Hewn timber.

138. Oak, juniper, and spruce knees.

139. Mahogany and cedar.

140. Hewn and round ship timber. White and Norway pine, how marked.

141. Fees.

SECTION

142. Penalty on surveyors for fraud, neglect, &c.

143. on persons selling without survey.

144. on person acting as surveyor without authority.

MARBLE.

145. City and town authorities may establish ordinances for survey of marble.

METALS AND ORES.

146. Assayers of ores and metals; appointment.

147. Duties and compensation.

MILK.

148. Inspectors of milk, how appointed, to be sworn and give notice.

149. to keep office, books, &c. May enter stores, &c., and take and analyse milk, &c.

150. Measures to be sealed.

151. Penalty for neglect to record name, &c.; for selling by measures not sealed, &c.; for selling adulterated milk, &c.

NAILS.

152. Nails and brads, how to be made and packed.

153. Manufacturer's name to be branded on cask.

154. Forfeiture and penalty.

155. Penalty for counterfeiting brand, shifting contents of casks, &c.

156. for attempting to transport out of state nails not branded, &c.

OILS.

157. What shall be deemed pure spermaceti oil.

158. Penalty for adulteration.

159. for selling adulterated oil as pure oil.

160. Same subject.

161. Test to be Harris's oleometer.

PAPER.

162. Paper, how packed and marked.

163. Penalty for selling paper not packed, &c.

164. Forfeiture.

POT AND PEARL ASHES.

165. Inspector-general to give bond.

166. Deputies to be appointed, to give bonds, and be sworn.

167. Casks, quality and size of.

168. how branded.

169. Ashes, how inspected; sorts, &c.

170. Casks to be weighed.

171. Penalty for unreasonable delay.

172. Inspector-general to make returns.

173. Fees.

174. Inspector's proportion of deputies' fees.

175. Inspectors may search vessels. Forfeiture.

176. Penalty on masters, &c., for receiving ashes not branded.

177. for obstructing search.

178. for branding falsely.

179. for shifting contents of casks.

POTATOES, ONIONS, AND SALT.

180. Potatoes, onions, and salt; weight, measurement. Penalties.

WOOD, BARK, AND COAL.

181. Dimensions of cord wood.

182. Penalty for selling wood, &c., not measured.

183. Fees.

184. Wood brought by water, how measured. Towns may make regulations, &c.

185. Carters to have tickets.

186. Cities may regulate inspection and sale of bark.





ry seaport from which butter and lard are exported, and in such other places as he shall judge necessary, appoint deputy-inspectors, for whose official conduct he shall be answerable; who shall be sworn before the inspector-general or a justice of the peace, and give bond to the inspector-general with sufficient sureties in the penal sum of five hundred dollars for the faithful discharge of the duties of their office.

Deputies to be appointed, to give bond, and be sworn  
R. S. 28, § 45.

SECT. 12. The inspector-general or his deputies shall examine casks, kegs, or firkins, containing butter or lard intended to be exported, and with a hollow iron searcher perforate the contents thereof from one head to the other, and thereby draw out so much as shall determine the quality of the whole; and shall see that it has been preserved with a due proportion of good fine salt, that it is sweet and in all respects fit to be exported

Manner of inspecting.  
R. S. 28, §§ 46, 48.

ger of spoiling; and they shall return in out of any cask, keg, or firkin.

tin, of butter or lard, which appears shall be branded in plain and legible *id*, and *first*, or *second*, or *third*; and word *refuse*; and each cask, keg, or randed with the letters MASS., (for ace where it is inspected, the initial inspector-general or deputy, and the nth and year in which the same is month consists of more than one

Brands of casks, &c.  
R. S. 28, § 49.

rs may, when requested, inspect and following sizes, namely: kegs twelve inches diameter in the heads, or ten

Size of kegs and quality of casks.  
R. S. 28, §§ 50, 51.

All other casks, kegs, or firkins, in exportation, shall be made of sound sh staves and heading, full bound, and eight and a half inches diameter gth, and ten and a half inches diam-

kin, before butter or lard is packed g brine, which shall remain therein ie is emptied from the cask, keg, or ner of such butter or lard, who shall f the heads thereof the full weight of he initial letter of his christian name

Casks, &c. to be filled with brine before packing, how branded.  
R. S. 28, § 52.

shall annually in the month of May fice of the whole number of casks, ight of each quality, of butter and ties during the year preceding the

Inspector-general to make returns. Contents.  
R. S. 28, § 47.

ector-general or any deputy for ser- ing, and delivering to the owner an nd, of the weight of each cask, keg, ch cask, keg, or firkin, to be paid by

Fees.  
R. S. 28, § 54.

ral or a deputy, on application made l, unreasonably refuses, neglects, or and branding, for the space of three him, he shall for each offence forfeit

Penalty for de- laying to inspect.  
R. S. 28, § 55.

ted into this state from another of without inspection.

Imported butter.  
R. S. 28, §§ 53, 58.

a brand belonging to or used by the



and over those letters the letter P, and in the line with the initial letters and farther up the barrel the figures designating the year in which the proof is made, and over such figures the letter M, which letters and figures shall be so deeply impressed on the barrel that the same cannot be erased or disfigured, and shall be in the form following: <sup>P.</sup> <sup>M.</sup>  
<sup>A. B.</sup> 1888.  
 When barrels burst or in any manner fail in the proving as aforesaid, so that in the opinion of the prover they are unfit for use, they shall not be stamped.

SECT. 30. For so proving each musket barrel the prover shall be entitled to receive from the owner thirty-three cents, and for each pistol barrel twenty-five cents, whether the same stand proof and are stamped, or not.

Fees for proving  
 fire-arms.  
 R. S. 28, § 68.

SECT. 31. Whoever manufactures within this state a musket or pistol, or sells or delivers, or knowingly purchases, a musket or pistol so manufactured, without having the barrels first proved, marked, and stamped, or sells, stocks, or finishes, or knowingly purchases, a musket barrel or pistol barrel manufactured within this state, which has not been proved, marked, and stamped, shall forfeit for each offence ten dollars: *provided*, that the penalties and provisions mentioned in this section shall not extend to muskets or pistols, or musket or pistol barrels, manufactured in an armory of the United States, for the use of, or in execution of a contract for the manufacture of fire-arms made or to be made with, the United States.

Penalty for buy-  
 ing, selling, &c.,  
 arms not proved;  
 R. S. 28, § 67.

SECT. 32. Whoever forges or alters the stamp of a prover of fire-arms, impressed on a musket or pistol barrel pursuant to law, shall pay a fine not exceeding fifty dollars.

for forging  
 stamps.  
 R. S. 28, § 68

#### FISH.

SECT. 33. The inspector-general of fish shall give bond with sufficient sureties to the treasurer of the commonwealth in the penal sum of ten thousand dollars, and shall have no interest directly or indirectly in the cure or packing of pickled fish.

Inspector-gen-  
 eral to give bond;  
 R. S. 28, § 69.  
 1846, 170, § 2.

SECT. 34. He may appoint deputy-inspectors in every seaport or other town where such fish is packed for exportation, for whose official conduct he shall be answerable. He shall take bonds of each of them with sufficient sureties, and shall receive from each deputy an excise or fee for his commission and bond, of one dollar, and no more. The deputies shall be sworn either before the inspector-general or some justice of the peace.

may appoint  
 deputies, who  
 shall give bond  
 and be sworn;  
 R. S. 28, § 70.  
 1853, 180, § 1.

SECT. 35. The inspector-general and deputy-inspectors shall inspect all fish for the inspection of which provision is made in this chapter.

to inspect all  
 fish, &c.  
 R. S. 28, § 71.  
 Fish, how pre-  
 pared, packed,  
 and branded.  
 R. S. 28, § 73.  
 1839, 132, §§ 1, 2.  
 12 Allen, 35.

SECT. 36. Under the supervision of the inspector-general and his deputies respectively, all kinds of split pickled fish and fish for barrelling, except herring, and all codfish tongues and sounds, halibut fins and napes, and sword fish, whenever said articles are intended for exportation, shall be well struck with salt or pickle in the first instance, and preserved sweet and free from rust, taint, or damage; and when the same are found in good order and of good quality, they shall be packed either in tierces containing each three hundred pounds, in barrels containing each two hundred pounds, in half barrels containing each one hundred pounds, in quarter barrels containing each fifty pounds, in eighths of a barrel or kids containing each twenty-five pounds, or in kids, or packages containing each less than twenty-five pounds on which the number of pounds therein shall be branded. Every cask, kid, or package, shall be packed with good clean salt suitable for the purpose, and after packing with sufficient salt to preserve its contents, shall be headed or well secured, and filled up with a clean strong pickle.

SECT. 37. There shall be four qualities of mackerel, three of salmon



such heading shall be free from sap and knots, and be planed; the barrels, half barrels, and tierces, shall be well hooped with at least three good hoops of sufficient substance on each bilge and three hoops of the like quality on each chime; the barrel staves shall be twenty-eight inches in length, and the heads shall be seventeen inches between the chimes; the barrels shall contain not less than twenty-eight nor more than twenty-nine gallons each; the half barrels not less than fifteen gallons each; and the tierces not less than forty-five nor more than forty-six gallons each. Each cask shall be made in a workmanlike manner, and branded on its side, near the [bung], with the name of the maker.

SECT. 45. The inspector-general or his deputies shall strictly examine and inspect all casks in which they may be required to pack fish; and shall reject such as are not made in a substantial manner and according to the provisions of this chapter.

Casks to be examined.  
R. S. 28, § 79.

SECT. 46. The fees for inspecting and branding, exclusive of coo-  
page, shall be, for each tierce fourteen cents, each barrel nine cents, each half barrel six cents, each cask of a smaller denomination three cents, and, in addition to the fees aforesaid, one cent for each cask nailed as before provided; and all fees shall in the first instance be paid by the original owner of the fish or by the person employing the inspector, and may be recovered by them respectively of the person who afterwards purchases or exports the same.

Fees for inspecting, &c.  
R. S. 28, § 80.

SECT. 47. The inspector-general may receive from each of his deputies for every cask of fish inspected by him, the following fees: for each tierce, four cents, for each barrel, one cent, for each half barrel, half a cent, and for each smaller cask, one-quarter of a cent.

Inspector's proportion of deputies' fees.  
R. S. 28, § 81.

SECT. 48. Alewives or herrings intended to be packed for sale or exportation, shall be sufficiently salted and smoked to cure and preserve the same, and afterwards shall be closely packed in boxes in clear and dry weather.

Alewives, &c., how prepared and packed;  
R. S. 28, § 82.

SECT. 49. Smoked alewives or herrings shall be divided and sorted by the inspector or his deputy, and denominated according to their quality, *number one* and *number two*. Number one shall consist of all the largest and best cured fish; number two of the smaller but well-cured fish; and in all cases, those which are belly broken, tainted, scorched or burnt, slack salted, or not sufficiently smoked, shall be taken out as refuse.

how sorted and numbered.  
R. S. 28, § 83.

SECT. 50. Boxes made for the purpose of packing smoked alewives or herrings, and containing the same, shall be made of good sound boards sawed and well seasoned; the sides, top, and bottom, of not less than half inch, and the ends of not less than three-quarters inch, boards, securely nailed, and shall be seventeen inches in length, eleven inches in breadth, and six inches in depth, in the clear, inside.

Boxes, quality and capacity of.  
R. S. 28, § 84.

SECT. 51. Each box of alewives or herrings inspected shall be branded on the top by the inspecting officer with the first letter of his christian name, the whole of his surname, the name of the town where it was inspected, with the addition of Mass., and also with the quality of *number one*, or *number two*. Herrings taken on the coasts of Nova Scotia, Newfoundland, Labrador, or Magdalen Islands, and brought into this state, shall also be branded with the name of the place or coast where taken.

Brands.  
R. S. 28, § 85.  
1889, 132, § 3.

SECT. 52. The fees for inspecting, packing, and branding, shall be five cents for each box, which shall be paid by the purchaser; and the inspector-general may require from his deputies one cent for each box inspected, packed, and branded by them.

Fees for inspecting, &c.  
R. S. 28, § 86.

SECT. 53. The inspector-general shall, in the month of January annually, make a return into the office of the secretary of the commonwealth, of all the fish inspected by him and his deputies during the year preceding the first day of said January, designating the quantities, kinds,

Inspector-general to make returns, &c.  
R. S. 28, § 72.  
1869, 102.



**MEAL.**

the sale and delivery of wheat, corn, or ground corn or corn meal, meal except oatmeal, the same bushel.

Grain and meal, how sold.  
1840, 82, § 1.  
1855, 232, § 1.  
See Ch. 51, § 12.

be sixty pounds; a bushel of . of oats, thirty-two pounds; a ght pounds; and a bushel of ny other meal except oatmeal,

Weight of bushel.  
R. S. 23, § 100.  
1840, 82, § 1.  
1855, 232, § 1.

of cities and selectmen of towns asurers of grain, and when but horize him to appoint deputy-nd deputies shall, when called ct for the sale of any quantity ticles mentioned in the preced- of and give a certificate of the ght according to the rule there-

Measurers to be appointed.  
Duty.  
1855, 232, § 2.  
1856, 422.

any quantity exceeding one bushel of either of the articles aforesaid, without the same having been weighed by one of the public measurers appointed under the preceding dollars for every measured bushel mber of pounds herein before re- aser in an action of tort.

Penalty for short weight when measurer not employed.  
1855, 232, § 3.

asurers shall be prescribed by the men of the several places in which d one-half by the seller and one-half

Fees of measurer, who to pay.  
1855, 232, § 4.

ity-measurer uses, or has in his pos- purposes herein provided, any false strument for weighing, or colludes ntent to defraud the other party, or ulent certificate under this chapter, the mayor and aldermen or select- ereof be punished by a fine not ex- y imprisonment not exceeding six

Penalty for false weights, &c., or collusion, &c.  
1855, 232, § 5.

**POWDER.**

§ 100.)

ured in this state shall be put into twenty-five pounds, fifty pounds, or e same is well secured in copper, exceeding five pounds each, and r tin covers.

Quality and size of casks, &c., for gunpowder.  
R. S. 23, § 92.  
See Ch. 88, §§ 48, 49.

gunpowder manufactured within by land or water and landed, shall aint, in legible characters, with the anufacturer, the weight of the cask, as manufactured; and each canister the word *gunpowder*.

All casks to be marked.  
R. S. 23, § 93.

marks a cask of gunpowder with the anufacturer of the same, or changes th the name of one manufacturer of another manufacturer, shall for ling twenty dollars.

Penalty for falsely marking, &c.  
R. S. 23, § 94.





but no inspection need be made where the vendor and vendee agree to waive an inspection.

[HERDS-GRASS SEED, 1862, 124.]

#### HOOPS AND STAVES.

SECT. 84. In every maritime place from which staves are usually exported, there shall be annually chosen two or more suitable persons to be viewers and cullers of staves and hoops, who shall be sworn.

Cullers of hoops and staves to be chosen.  
R. S. 28, § 99.

SECT. 85. White oak butt staves shall be at least five feet in length, five inches wide, and one inch and a quarter thick on the heart or thinnest edge and every part thereof; white oak pipe staves shall be at least four feet and eight inches in length, four inches broad in the narrowest part, and not less than three-quarters of an inch thick on the heart or thinnest edge: white oak and red oak hogshead staves shall be at least forty-two inches long, and not less than half an inch thick on the heart or thinnest edge; white oak and red oak barrel staves for foreign market shall be thirty-two inches long, and for home use thirty inches long, and shall average half an inch thick on the heart or thinnest edge; white oak and red oak hogshead and barrel staves shall be at least four inches in breadth, and none less than three inches in breadth in the narrowest part, and those of the breadth last mentioned shall be clear of sap; and all staves shall be well and proportionably split.

Quality and size of staves;  
R. S. 28, § 101.

SECT. 86. Hogshead hoops that are exposed to sale or exported shall be from ten to thirteen feet in length, of white oak or walnut, of good and sufficient substance, and well shaved; those of oak shall not be less than one inch broad at the least end, and those of walnut shall not be less than three-quarters of an inch broad at the least end; each bundle shall consist of thirty hoops; and all hoops of ten, twelve, and thirteen feet respectively, shall be made up in distinct bundles by themselves. If hoops of less dimensions than those prescribed by law, are packed, or if a bundle contains less than thirty hoops, the bundle shall be forfeited, and may be seized by the culler of hoops and libelled for the benefit of the place where it is offered for sale.

of hogshead hoops.  
R. S. 28, § 102.

SECT. 87. Cullers shall be allowed for their time and services, fifty cents a thousand for hoops, twenty-eight cents a thousand for barrel staves, thirty-three cents a thousand for hogshead staves, forty cents a thousand for pipe staves, and forty-four cents a thousand for butt staves, as well refuse as merchantable: the merchantable to be paid for by the buyer, the refuse by the seller.

Fees for culling.  
R. S. 28, § 100.

SECT. 88. If a culler connives at or is guilty of fraud in culling staves or hoops, he shall forfeit fifty dollars for each offence; and if he refuses to perform service when requested shall forfeit five dollars.

Penalty for fraud in culling.  
R. S. 28, § 103.

#### HOPS.

SECT. 89. The inspector-general of hops shall give bond with sufficient sureties to the treasurer of the commonwealth, in the penal sum of three thousand dollars.

Inspector-general to give bond;  
R. S. 28, § 104.

SECT. 90. He shall appoint one or more deputy inspectors in such parts of the state as will best accommodate the growers and consumers of hops; shall be responsible for their official conduct, may require from each of them sufficient bonds with sureties, and receive from each one-fifth part of the fees received by him.

to appoint deputies.  
R. S. 28, §§ 105, 110.

SECT. 91. No hops, other than those which are of the growth of another state, as hereinafter mentioned, shall be exported from this state, unless they are of the qualities prescribed by this chapter, and have been duly inspected and marked accordingly, and are in square bags or pockets, each bag to contain as nearly as may be four hundred pounds, and each pocket two hundred pounds weight of merchantable hops. Hops of the growth of another state being duly inspected therein and accom-

No hops to be exported without inspection, except, &c.  
R. S. 28, § 107.



affect hops shipped coastwise to any place within this state for the purpose of being inspected and marked; but in such case, a certificate from the owner shall accompany them, setting forth the owner's name, the number of bags, pockets, or packages, and the name of the inspector to whom they are sent for inspection.

Hops shipped coastwise, &c.  
R. S. 28, § 118.

## LEATHER, BOOTS, &amp;c.

[See 1866, 236.]

SECT. 103. The inspector-general of leather shall give bonds with sufficient sureties to the treasurer of the commonwealth in the penal sum of three thousand dollars.

Inspector-general, bonds of.  
R. S. 28, § 120.  
1861, 217.

SECT. 104. He shall appoint one or more deputy-inspectors in any place upon the application of the mayor and aldermen or selectmen, shall be answerable for their doings, and shall take a bond with sufficient sureties from each of them, to himself and his successors in office, in a penal sum not exceeding three hundred dollars.

Deputies to be appointed, who shall give bonds.  
R. S. 28, § 121.

SECT. 105. Each inspector shall furnish himself with proper scales, weights, and seals, and when requested shall inspect within the place for which he is appointed all sole and belt leather offered for his inspection, shall weigh each side of leather which he inspects, and shall impress thereon his name and the name of the place for which he is inspector at full length, and also the weight thereof; and on leather which he finds manufactured of good hides in the best manner, he shall impress the word *best*, on that manufactured of good hides in a merchantable manner, the word *good*, on that manufactured of damaged hides in a merchantable manner, the word *damaged*, and on leather not belonging to any of the qualities aforesaid, the word *bad*.

Leather to be inspected, weighed and stamped.  
R. S. 28, §§ 125, 127.  
1861, 217.

SECT. 106. Each deputy-inspector who is appointed for one place in a county shall, upon application made to him, inspect sole and belt leather in any other place of the same county, when there is no inspector for such other place; and he shall upon the like application inspect leather in any place of an adjoining county when there is no inspector appointed in such adjoining county.

Same subject.  
R. S. 28, § 126.  
1861, 217.

SECT. 107. The inspector-general and each deputy-inspector shall be paid for inspecting, weighing, and sealing, each side of leather, the sum of one cent, which shall be paid by the purchaser; and he may receive from each of his deputies one mill for each side of leather inspected, weighed, and sealed, by such deputy. When an inspector is called to inspect a lot of leather of less quantity than one hundred sides, or which is more than one mile distant from the inspector's place of business, he shall receive two cents a side for each side inspected, weighed, and sealed, and ten cents a mile travelling fees, to be computed both ways.

Fees.  
1860, 177, §§ 1, 2.  
1861, 217.  
See 1872, 156.

SECT. 108. No sole or belt leather made of the hides of neat cattle, except such as has been previously inspected and sealed by one of the inspectors of this state, or by some inspector lawfully appointed for that purpose in some other of the United States, shall be sold for any purpose whatsoever, within a place in which there is an inspector, until it has been inspected, weighed, and sealed, by one of the inspectors of such place.

Sole and belt leather, &c., not to be sold until inspected.  
R. S. 28, § 123.  
1861, 217.

SECT. 109. Whoever, within a place for which an inspector has been appointed, buys or sells sole or belt leather not inspected as aforesaid, shall forfeit one dollar for each side of leather so bought or sold.

Penalty;  
R. S. 28, § 124.  
1839, 136.  
1861, 217.

SECT. 110. Whoever counterfeits, alters, or defaces, the inspector's marks on a side of leather inspected, shall for each offence forfeit the sum of twenty-five dollars.

See 1866, 236, § 1.  
for counterfeiting marks;  
R. S. 28, § 128.  
1861, 217.

SECT. 111. If a side of sole or belt leather, when dried in a merchantable manner, so varies as to weigh five per cent. more or less than the weight marked thereon by the inspector, he shall be subject to the pay-

when weight varies five per cent.



in and imported from the state of Maine, the inspector shall require that such lime be in casks manufactured from sound and well-seasoned lumber, with at least ten good hoops well driven and secured upon each cask; the staves of the cask shall be thirty inches in length and not less than half an inch in thickness; the heads shall be not less than three-fourths of an inch in thickness and shall be well crozed in; each cask to be not less than twenty-six and one-half inches between the heads and seventeen inches between the chimes, with a good and suitable bilge, and made in a workmanlike manner; and the same rules, regulations, restrictions, and liabilities except as to the size of the cask, shall apply to lime imported from the state of Maine, as are provided respecting lime manufactured in this state.

SECT. 123. Whoever sells, exposes to sale, ships, or receives on board of a vessel, in casks, any lime manufactured within this state, or the state of Maine, other than such as is contained in casks made according to the provisions of the preceding sections, and having the aforesaid marks or brands respectively, shall forfeit one dollar and fifty cents for each cask sold, offered for sale, shipped, or received on board of a vessel: *provided*, that nothing contained in this chapter shall be construed to restrain any person from retailing lime by the bushel, or other quantities not in casks.

SECT. 124. If a cask of lime is sold, or exposed to sale, or put on board of a vessel, contrary to the provisions of this chapter, the same shall be forfeited, and an inspector may seize and libel the same.

SECT. 125. If, after a cask containing lime has been branded as aforesaid, any person shifts the contents of such cask and puts therein other lime with intent to sell the same, he shall forfeit one dollar and fifty cents for each cask of lime so shifted.

casks for Maine lime.  
Same rules, &c., except as to size of casks.  
1846, 237, §§ 1, 2.

Penalty for selling in other casks, &c.  
R. S. 28, § 137.

Forfeitures.  
R. S. 28, § 138.  
R. S. 118, §§ 20, 21, &c.

Penalty for shifting contents of casks.  
R. S. 28, § 139.  
1859, 136.

#### LUMBER, ORNAMENTAL WOOD, AND SHIP TIMBER.

[See 1836, 115.]

SECT. 126. A surveyor-general of lumber shall be appointed by the governor, with the advice and consent of the council, for a district to consist of the county of Suffolk, the cities of Charlestown, Cambridge, and Roxbury, and the towns of Dorchester, Quincy, and Brighton. He shall reside in the district, keep an office in Boston conveniently located and accessible to the public, be sworn, give bond with sufficient sureties to the treasurer of the commonwealth in the sum of two thousand dollars for the faithful discharge of his duty, and hold his office for three years, and until a successor is appointed and qualified, unless sooner removed.

SECT. 127. He shall appoint a sufficient number of competent and discreet deputy-surveyors, removable at his pleasure, and for whom he shall be responsible; they shall be citizens of the places for which they are appointed, and be sworn and give bond to him for the faithful discharge of their duties. He shall appoint one or more of them to survey oak and other wood commonly used in ship-building, and one or more to survey mahogany, cedar, and other ornamental wood and lumber. No surveyor-general or deputy shall be a dealer in lumber of the kind he is appointed to survey, or survey any lumber in which he has a pecuniary interest, directly or indirectly, or for any person or persons by whom he is employed, by a salary or per diem allowance.

SECT. 128. All applications for surveys shall be made to him. All surveys made by his deputies and the order of their services, in rotation or otherwise, shall be under his directions, and he shall, by himself or his deputies, survey and admeasure all lumber brought into the district for sale, except lumber manufactured in this state, which shall also be surveyed when a request is made therefor by purchaser or seller.

SECT. 129. He shall keep a record of all lumber surveyed by himself

Surveyor-general of lumber for Suffolk and vicinity, how appointed, to give bond, &c.;  
1859, 224, §§ 1, 2.

to appoint deputies; not to deal in lumber;  
1859, 224, §§ 2, 3.

to receive applications, and direct surveys.

to keep record



denominated number two, and include all other descriptions, except when one-third is worthless, which boards, planks, and joists, shall be denominated refuse.

SECT. 137. Of hewn timber, except mahogany and cedar, there shall be three sorts. The first sort shall be denominated number one, and include all timber that is sound and nearly square edged. The second sort shall be denominated number two, and include timber of all other descriptions, except [when] one-third is worthless, which timber shall be denominated refuse.

Hewn timber.  
Sorts and num-  
bers.  
1868, 164, § 7.

SECT. 138. Of oak, juniper, and spruce knees, there shall be two sorts. The first sort shall be denominated number one, and include all sound knees of the following dimensions: arm or root one foot six inches long, body of knee three feet long, working thickness four inches; arm or root two feet and six inches long, body of knee three feet long, working thickness five inches; arm or root two feet and nine inches long, body of knee three feet and six inches long, working thickness six inches; arm or root three feet and three inches long, body of knee four feet and six inches long, working thickness seven inches; arm or root three feet and six inches long, body of knee four feet and three inches long, working thickness eight inches; arm or root three feet and nine inches long, body of knee four feet and six inches long, working thickness nine inches; arm or root four feet long, body of knee five feet long, working thickness ten inches and upwards. The second sort shall be denominated refuse, and shall include all other descriptions of less dimensions than those specified in the first denomination; all knees shall have the working thickness marked thereon, and on the first sort, the number "one" shall be marked.

Oak, juniper, and  
spruce knees.  
1868, 164, § 8.

SECT. 139. Of mahogany and cedar there shall be but one sort, and it shall be the duty of the surveyors who are especially appointed to survey mahogany and cedar, to number all the mahogany and cedar logs or sticks contained in each lot or cargo in regular numerical order, and to mark the number of each log or stick upon the same in legible characters. And the said surveyor shall, to the best of his ability, ascertain the whole number of feet, board measure, in each and every log or stick, and what quantity thereof is merchantable, and what is refuse. And said surveyor shall thereupon issue a certificate or survey bill, of said survey, in which shall be stated the number of each log or stick, and the whole number of feet contained in the same, and specifying the number of feet which is merchantable and refuse, respectively.

Mahogany and  
cedar.  
1868, 164, § 9.

SECT. 140. Hewn timber, and round timber, used for masts and ship-building, shall be surveyed and sold as ton timber, at the rate of forty cubic feet to the ton; oak and other timber and planks commonly used in ship-building, shall have the true contents marked thereon in cubic feet or board measure, and in the first and second sorts, the numbers "one" and "two" shall be marked thereon respectively. In the survey of white and Norway pine boards, planks, joists, sawed timber, and dimensions, the contents of the same shall be truly marked thereon in legible numbers, and on the first, second, third, fourth, and fifth sort of white and Norway pine boards, planks, and dimensions, the numbers shall be marked respectively. All boards, planks, joists, sawed timber, and dimension lumber, shall be received and sold according to the contents thereof, as fixed and marked under the aforesaid regulations. In the admeasurement of round timber, one-fourth of the girth shall be taken for the side of the square.

Hewn and round  
ship timber.  
White and Nor-  
way pine.  
1868, 164, § 10.

SECT. 141. The fees for surveying and marking shall be paid by the purchaser, as follows: for white, southern, and Norway pine, spruce, hemlock, juniper, and white wood boards, planks, joists, sawed timber, and dimension, twenty-four cents for every thousand feet board measure; for southern pine flooring boards, thirty-four cents for every thou-

Fees.  
1868, 164, § 11.  
See 1865, 115, § 1.





ier vessels, used in the sale, or annually sealed by the sealer of and all cans so used shall be wing the quantity which they

Measures to be sealed.  
1859, 208, § 4.  
See Ch. 51.  
1 Allen, 424.  
See 1863, 140.  
1864, 122.  
1867, 204.  
Penalty for neglect to record name, &c., for selling by measures not sealed, for selling adulterated milk, &c.  
1866, 222.  
1869, 206, §§ 2, 4, 6.  
1 Allen, 598.  
2 Allen, 167.  
See 1863, 140.  
1864, 122.  
1867, 204.  
1870, 311.  
1872, 319.  
1873. c. 180

e his name and place of business, and his name legibly placed

upon all carriages used by him in the conveyance of milk, before engaging in the sale thereof, and whoever sells, or buys at wholesale, milk by any other measures, cans, or vessels than those sealed as before provided or adulterated by water or otherwise, milk to be sold in this

of the inspector as a dealer in milk, vingly sells or causes to be sold all forfeit twenty dollars for each ilk produced from cows fed upon or any substance deleterious to venty-five dollars for the first, and ice.

ls, and brads of all sizes, manupacked in strong and sufficient ooped, not containing more than e well made and packed free from (ails or brads) or any fraudulent

Nails and brads, how to be made and packed.  
R. S. 28, §§ 168, 164.

t-or cut nails or brads, shall be he manufacturer, in plain, legible name and the whole of his surration or company, by the name ompany,) and the net weight of

Casks, how branded  
1837, 111, § 1.

or quantity, of wrought or cut te and not so branded or marked, of a vessel or carriage of convey- same shall be forfeited; and the refuse, scraps, or waste, which is one dollar.

Forfeiture and penalty.  
R. S. 28, § 165.

a brand used or intended to be itroys or alters a mark or impres- n a cask of wrought or cut nails sion by such counterfeit brand to hifts any such nails or brads from hereby avails himself of another ' twenty dollars.

Penalty for counterfeiting brand; shifting contents of casks, &c.;  
R. S. 28, § 166.

rd a vessel or carriage of convey- ought or cut nails or brads manu- h are apparently intended to be ot branded and marked as above um equal to the full value of such

for attempting to transport out of state nails not branded, &c.  
R. S. 28, § 137.

, 345.]

old under the names of sperm, , and second winter oils, shall be r strained spermaceti oil.

Pure spermaceti oil.  
R. S. 28, § 109.

ames aforesaid which are adulter- other oil of less value than pure oil, and the vendor shall be liable

Penalty for adulteration  
R. S. 28, § 170.



the peace, and for whom he shall be answerable; and he shall take bond from each of them with sufficient sureties for the faithful discharge of the duties of his office.

SECT. 167. Every cask in which pot or pearl ashes are packed for exportation shall be made of sound and well-seasoned oak or white ash staves and heading, full bound, twenty-nine inches in length, nineteen inches diameter in the head, and of such weight in proportion to its contents as will amount as near as may be to fourteen per cent. tare thereon.

Casks for pot, &c., ashes, quality and size of;  
R. S. 28, § 186.

SECT. 168. Every manufacturer of pot and pearl ashes shall brand each cask containing the same with the initial letters of his christian name and the whole of his surname, and with the name of the town where they were manufactured, before the same are removed from the manufactory, and shall forfeit one dollar for each cask so removed before being so branded.

how branded.  
R. S. 28, § 180.

SECT. 169. No person shall ship any pot or pearl ashes for exportation before he has submitted the same to the examination of the inspector or his deputy, who shall if necessary start them out of the casks and carefully inspect and sort them into three different sorts; and put each sort by itself in tight new casks, well hooped and coopered, which the inspector shall distinguish by the words *first sort*, *second sort*, or *third sort*, with the words *pot ashes*, or *pearl ashes*, as the case may be, branded in plain, legible letters, together with the letters of his name, the place of inspection, and the word MASSACHUSETTS at full length on each cask: *provided*, that pot or pearl ashes which have been imported into this state from any of the United States where laws exist for the inspection of the same, may be exported without being reinspected in this state, if they are accompanied by a certificate of inspection signed by an inspector of the state whence they were imported, describing the quality and weight thereof, and if the casks containing them are branded with the name of the state from which they were imported, and are in all respects made conformably to law.

Ashes, how inspected.  
Sorts, &c.  
R. S. 28, § 181.

SECT. 170. The inspector, at the time of starting pot or pearl ashes for inspection, shall weigh the casks and mark the weight with a marking iron on each head.

Casks to be weighed.  
R. S. 28, § 180.

SECT. 171. If an inspector of pot and pearl ashes unreasonably refuses, neglects, or delays, to make an inspection, for the space of three hours after an application therefor, he shall for each offence forfeit five dollars.

Penalty for unreasonable delay.  
R. S. 28, § 184.

SECT. 172. The inspector-general shall annually in January make a return into the office of the secretary of the commonwealth, of the number of casks of pot and pearl ashes inspected by him and his deputies during the year preceding the first day of said January, specifying the number under each brand and the weight of each quality.

Inspector-general to make returns.  
R. S. 28, § 179.

SECT. 173. (R.) [An inspector shall receive for inspecting, weighing, and delivering to the owner an invoice or weight note under his hand of the weight of each cask of pot or pearl ashes, six cents for every hundred weight so inspected; and the further sum of twelve cents for coopering and nailing each cask and putting the same in shipping order, to be paid by the purchaser.]

Fees.  
R. S. 28, § 182.  
(R.) *Repeal and substitute.*  
1867, 47.

SECT. 174. The inspector-general shall not receive from any deputy more than seven and a half per cent. on the sum first mentioned in the preceding section, nor any part of the sum allowed for cooperage.

Inspector's part of deputies' fees.  
R. S. 28, § 183.

SECT. 175. Any inspector may enter on board of vessels lying in the harbor where he is authorized to make inspection, and if upon search he discovers any cask of pot or pearl ashes not branded as before directed in this chapter, the same shall be forfeited, and the inspector shall seize and label the same.

Inspectors may search vessels.  
Forfeiture.  
R. S. 28, § 187.  
R. S. 118, §§ 20, 21.

SECT. 176. The master or commander of a vessel who receives on board a cask of pot or pearl ashes not branded as aforesaid, shall forfeit twenty dollars for each cask so received.

Penalty for receiving ashes not branded.  
R. S. 28, § 188.



SECT. 185. Each wharfinger, carter, or driver, who conveys any firewood or bark from a wharf or landing place, shall be furnished by the owner or seller with a ticket certifying the quantity which the load contains and the name of the driver; and if firewood or bark is thus conveyed without such ticket accompanying the same, or if a driver refuses to produce and show such ticket on demand to any sworn measurer, or to give his consent to have the same measured, or if such ticket certifies a greater quantity of wood or bark than the load contains, in the opinion of the measurer after measuring the same, the driver and owner shall for each load thereof forfeit the sum of five dollars. But nothing contained in this chapter shall be construed to extend to a person who transports, carts, or causes to be transported or carted, from a wharf or landing place to his own dwelling house or store, cord wood or bark which he has purchased on a wharf or landing place, or has landed thereon upon his own account.

Carters to have tickets.  
R. S. 28, § 204.  
1839, 186.

SECT. 186. The city council of a city may establish ordinances and regulations, with suitable penalties, for the inspection, survey, admeasurement, and sale of bark for fuel or manufacturing purposes brought into said city for sale, whether the same is exposed for sale in ranges or upon a cart or other vehicle; and said city may provide for the appointment of such surveyors, inspectors, and other officers, as may be necessary to carry into effect said ordinances, and may establish their fees: *provided*, that no penalty for any one violation shall exceed the sum of five dollars.

Cities may regulate inspection and sale of bark.  
1854, 381.

SECT. 187. (R.) [Anthracite, bituminous, or mineral coal when sold in quantities of five hundred pounds or more, except by the cargo, shall be sold by weight, and two thousand pounds avoirdupois shall be the standard for the ton by which the same shall be weighed and sold.]

Certain coals to be sold by weight.  
1865, 188, § 1.  
(R.) Repeal and substitute.  
1870, 206.

SECT. 188. (R.) [The mayor and aldermen or selectmen of every place where such coal is sold shall appoint one or more persons not engaged in the business of selling coal to be weighers of such coal, who shall be sworn, and be removable at the pleasure of the board appointing them, and shall receive such fees as may be ordered by the board, which shall be paid by the seller.]

Weighers who are not sellers to be appointed and sworn.  
1865, 188, §§ 3, 5.  
(R.) Repeal and substitute.  
1870, 206.

SECT. 189. (R.) [On or before the delivery of such coal the seller shall cause the same to be weighed by a sworn weigher of the place in which the same is sold or delivered, and a certificate of the weight thereof signed by the weigher shall be delivered to the buyer or his agent at the time of the delivery of the coal.]

Seller to procure certificate of weight.  
1865, 188, § 2.  
(R.) Repeal and substitute.  
1870, 206.

SECT. 190. (R.) [Whoever violates any provision of the three preceding sections, shall for each offence forfeit thirty dollars.]

Forfeiture, &c.  
1865, 188, § 4.  
2 Allen, 820.  
Substitute, 1870, 206.

SECT. 191. In the sale of charcoal, the baskets, tubs, or vessels used in measuring the same, except as hereinafter provided, shall be of a cylindrical form and of the following dimensions in the inside thereof, to wit: nineteen inches in diameter in every part and eighteen inches and one-tenth of an inch in depth, measured from the highest part of the bottom thereof; each of which shall be deemed to be of the capacity of two bushels, and shall be filled level full; and every such vessel shall be sealed by a sealer of the place in which the person using the same shall usually reside or do business.

Form and dimensions of charcoal measures.  
1868, 306, § 1.

SECT. 192. Charcoal may be measured in boxes, bins, or cans, of the following capacities, to wit: of five, ten, twenty, thirty, forty, or fifty bushels, such boxes, bins, or cans, being first lawfully sealed as aforesaid; and five thousand one hundred and thirty-two cubic inches shall be deemed equal to two bushels, or the level basket, tub, or vessel, described in the preceding section.

Dimensions of charcoal boxes, bins, or cans.  
1868, 306, § 2.

SECT. 193. Every vendor of charcoal, who has in his possession any basket, tub, box, bin, vessel or measure of less dimensions than those required by the two preceding sections, or not sealed as therein provided,

Penalty for having, &c., illegal measures.  
1839, 135.

with intent to use the same or perm  
charcoal, sold or agreed to be sold, i  
measure in his possession. And ev  
basket, vessel, or measure, any charc  
special agreement of the buyer ar  
ceeding one dollar for every two  
be measured, and such basket, vess  
SECT. 194. The mayor and ald  
shall appoint one or more suitable  
or measures used or intended to be  
conforming to the foregoing provis  
any person having in his possessio  
and take him and them before the  
upon his being convicted or found  
baskets, vessels, and measures to be

to be  
d to  
gal  
s, &c.,  
st with-  
unt, &c.  
s, §§ 1, 2

## CHAPTER

### OF SALES BY AUCTIONEERS,

#### AUCTIONEERS.

##### SECTION

1. Auctioneers to be licensed by selectmen, &c., for one year. Fees for license. License to be recorded.
2. If license is refused, application may be made to county commissioners, &c.
3. Auctioneers to give bond.
4. to keep an account of sales.
5. Penalty for receiving goods from minors, &c.
6. Auctioneer may sell within his county, &c. Penalty.
7. Forfeitures.
8. Tenants answerable if they permit unlicensed sales in their premises.
9. Penalty for selling without license.
10. Sales by sheriffs, executors, &c., not included in this chapter.
11. Penalty for fraud or deceit.
12. Licenses in cities, &c. Penalty for selling at places not authorized.

#### HAWKERS AND PEDLERS.

13. Articles which may be sold by hawkers and pedlers without license.

SECTION 1. The mayor and ald  
town, by writing under their hand  
inhabitants of their respective cities  
the same for the term of one yea  
city or town for each license the su  
every license in a book to be kept l

pers to  
ed, &c.,  
§§ 1,

SECT. 2. If on application made  
ably refuse or neglect to license the  
fourteen days' notice and bonds t  
commissioners, who, upon hearing t  
SECT. 3. Each auctioneer shall,

men re-  
mity  
loners  
nee.  
§ 2.

to the treasurer of the city or town that he shall in all things conform Auctioneers to give bond; 1857, 232, § 1.

keep a fair and particular account in, and of the persons from whom to keep an account of sales. R. S. 29, § 5.

sives for sale by auction any goods such, or sells by auction any of his asset, shall forfeit to the use of the hundred dollars for each offence. Penalty for receiving goods from minors, &c. R. S. 29, § 4. 5 Mass. 505.

at public auction in any place within y others may sell real or personal same is situated in any place within auction in any place where he is not y dollars. Auctioneer may sell within his county, &c. 1837, 233. 1862, 115, § 1.

rs for sale by auction any goods or as is provided in this chapter, the the city or town, and may be seized tmen, and libelled according to the nd fifty-three. Forfeitures. R. S. 29, § 9.

t of any house or store, having the e same, who knowingly permits a by public auction in such house or ppurtenant to the same, contrary to l forfeit a sum not exceeding five Tenants answerable, if they permit unlicensed sales in their premises. R. S. 29, § 10.

and qualified as an auctioneer, sells ial estate by public auction, he shall ceeding five hundred dollars. Penalty for selling without license. R. S. 29, § 7. 8 Allen, 99.

ding sections shall extend to sales oners, constables, collectors of taxes, , assignees of insolvent debtors, or sell real or personal estate. Sales by sheriffs, &c., not included in this chapter. R. S. 29, § 11.

her person who is guilty of fraud or tion, shall for each offence forfeit a llars. Penalty for fraud or deceit. 1857, 232, § 2.

ed upon such conditions respecting attels within a city or town as the xem expedient; and if an auctioneer ot authorized by his license, he shall d sold without a license. Licenses in cities, &c. R. S. 29, §§ 13, 14. 1854, 448, § 33.

AND PEDLERS.

out from town to town, or from place dwelling-house in the same town, nd provisions, live animals, brooms, pper, books, pamphlets, agricultural he products of his own labor or the Articles which may be sold by pedlars without license. 1846, 244, § 2. See §§ 15, 25. See 1862, 178.

y city, and the inhabitants of any l aldermen or selectmen thereof to ods, wares, or merchandise, the sale g section, and while such authority dermen and selectmen may make s, or may grant licenses to minors to l conditions as they shall prescribe; l not remain in force beyond their f a violation of the rules and regu- Cities and towns may regulate such sales by minors. Penalty 1846, 244, § 2. 8 Allen, 61.





Worcester, each four dollars; for Norfolk, Berkshire, Hampden, Bristol, and Plymouth, each three dollars; for Franklin, Hampshire, and Barnstable, each two dollars; for Nantucket, one dollar; for the county of Dukes County, one dollar. And the county treasurers, respectively, upon the receipt of any sum, as aforesaid, shall certify the amount so received on the face of the license.

SECT. 21. The secretary shall keep a record of all licenses granted, with the number of each, the name and residence of the persons licensed, the counties, cities, and towns, mentioned therein, of all special state licenses, and of all transfers of licenses. The treasurers of the counties, cities, and towns, shall severally keep records of all licenses upon which the sums provided in this chapter have been paid, with the number of each, the name and residence of the persons licensed, and the sums received thereon, and all such records shall be open for public inspection.

SECT. 22. All sums paid to the secretary under this chapter shall be for the use of the state; and all sums paid to the treasurer of a county, city, or town, shall be for the use of such county, city, or town.

SECT. 23. A license granted under the provisions of section sixteen or nineteen may be transferred by the secretary, upon application therefor and upon evidence furnished by the applicant like that required for granting a license. The person to whom it is transferred shall thereafter be liable in all respects as if he were the person originally licensed. No person shall sell under such license except the person named therein or in such transfer.

SECT. 24. Every person licensed to peddle as herein before provided shall post his name, residence, and the number of his license, in a conspicuous manner upon his parcels or vehicle, and when such license is demanded of him by any mayor, alderman, selectman, town or city treasurer or clerk, constable, police officer, or justice of the peace, shall forthwith exhibit it, and if he neglects or refuses so to do, shall be subject to the same penalty as if he had no license. So much of this chapter as relates to hawkers and pedlers, or a synopsis thereof, shall be printed on every license.

SECT. 25. No license to go about offering for sale or selling as aforesaid shall operate to defeat or bar a prosecution against the person licensed, if it is proved that he exposed to sale any article except such as are permitted in section thirteen in any county, city, or town, where he was not licensed to sell, or in which he had not paid the sum mentioned in his license; but no person so licensed shall be required to make payment to the treasurer of any county, city, or town, before he is prepared to trade therein. The license of any person convicted of a violation of any provision of this or the ten preceding sections shall be void.

SECT. 26. Whoever counterfeits or forges a license, or has a counterfeited or forged license in his possession, with intent to utter or use the same as true, knowing it to be false or counterfeit, or attempts to sell under a license which has expired, or is forfeited, or which was not granted or has not been transferred to him, shall forfeit a sum not exceeding one thousand dollars.

SECT. 27. Whoever goes from town to town, or from place to place, or from dwelling-house to dwelling-house, carrying for sale or exposing to sale any goods, wares, or merchandise, or takes a residence in any town for that purpose for a less term than one year, except as herein before provided, shall forfeit a sum not exceeding two hundred dollars for each offence.

SECT. 28. No hawker, pedler, or other itinerant trader, holding an auctioneer's license, shall sell or expose for sale by public auction any goods, wares, or merchandise, in any other city or town than that from whose authorities such license was obtained; nor in any place in such city or town, except such as shall be expressly described or set forth in said license.

Records of licenses.  
1846, 244, § 6.  
See § 25.

Sums paid for licenses, how appropriated.  
1846, 244, § 8.  
See § 25.

Licenses may be transferred.  
1846, 244, §§ 6, 8.  
See § 25.

Persons licensed to post name, &c., on parcels or vehicle, and exhibit license on demand, &c.  
1846, 244, § 9.  
1861, 298, § 2.  
See § 25.  
See 1864, 151, § 2.

Licenses, when not to protect party, &c.  
Shall be void, if, &c.  
1846, 244, §§ 4, 10.

Penalty for counterfeiting, &c., licenses, and selling without license;  
1846, 244, § 10.  
2 Allen, 61.  
See 1870, 331.

for unauthorized sales.  
1846, 244, § 1.  
12 Cush. 493.  
12 Gray, 52.  
See 1868, 12.  
1870, 331.

Hawkers, &c., licensed as auctioneers.  
1852, 115, § 2.  
See 1870, 331.  
14 Gray, 23.



or town, replace the same by similar

neglects to provide a suitable place for  
and balances, or to keep them in good  
y of them through his neglect to be  
forfeit two hundred dollars to be

Penalty on  
treasurers for  
neglect.  
1847, 242, § 4.

once at least in every ten years have  
adjusted, and sealed by the treasurer  
y; the expense whereof shall be paid  
, and towns. Every treasurer who  
er his charge so sealed, shall forfeit a

Treasurers to  
have stan-  
dards proved.  
Penalty.  
1847, 242, § 7.  
1848, 242, § 6.

notes to have more than one sealer of  
er shall, at the expense thereof, pro-  
ditional seals, weights, and measures,  
may have a complete set of the same.  
ts and measures shall receive of the  
nd seal, and shall give him a receipt  
n which the same are; and he shall  
for the due preservation of the same  
ivers them to the treasurer.

Each town sealer  
to have set of  
standards.  
R. S. 30, § 14.

Sealers account-  
able to towns for  
preservation of  
standards.  
R. S. 30, § 15.

commonwealth and his deputy, the  
l town sealers, shall each keep a seal  
f the treasurer and of his deputy shall  
ounty treasurers shall be the initial  
ve counties, followed by the letters  
ra, the name of their respective cities  
reviation thereof as the mayor and  
be.

Treasurers, dep-  
uties, and seal-  
ers, to have  
seal.  
Form of.  
R. S. 30, §§ 3, 4,  
5, 6.  
1847, 242, § 3.  
See § 13.

ghts and measures shall annually in  
; or post up notifications in different  
ry inhabitant who uses weights and  
and selling, and for public weighers  
ir measures, weights, balances, scales,  
aled; and he shall forthwith adjust  
brought to him for that purpose.

Sealers to noti-  
fy inhabitants,  
&c., to have  
weights, &c.,  
proved;  
R. S. 30, § 16.  
1847, 242, § 5.  
See § 13.  
12 Gray, 143  
106 Mass. 270.

city and town shall go annually to  
e which cannot be readily removed,

to visit and  
prove hay scale,  
&c.;

No sealer, except for the purposes  
ards of weights, measures, or scales,  
urpose of adjusting others.

not to remove  
standards, &c.  
1847, 242, § 6.  
See § 13.

f any duty prescribed in the three  
forfeit a sum not exceeding twenty

Penalty for neg-  
lect.  
R. S. 30, § 21.

s and measures, including the deputy  
ers, shall receive a fee of three cents  
am, or balance, by him sealed, ex-  
ng each platform balance weighing  
, the sealer shall receive one dollar,  
ghing less, fifty cents. Every sealer  
ensation for all repairs, alterations,  
ary for him to make.

Fees of sealers.  
1847, 242, §§ 4, 6.

1876 £ 123 1/2

yards which have been heretofore  
ay continue to be used: *provided*,  
reof shall be annually tried, proved,  
and measures, like other beams and

Vibrating steel-  
yards allowed  
to be used, if  
sealed.  
R. S. 30, § 22.

ny other weights, measures, scales,

Penalty for



VESSELS AND BOATS TRANSPORTING STONE, &c.	
in	SECTION
se,	80. Weighers of lighters, &c., to be appointed by selectmen, &c.
me-	81. Lighters, &c., to be marked.
	82. Duty of weighers.
en-	83. Deduction, when may be made, &c.
	84. Persons on board, where to keep while marks are being taken.
	85. Marks, to be annually examined.
	86. Fees.
ce-	87. Penalty for neglecting to have lighters weighed.
ad-	88. Penalty for falsely placing marks, &c.
	89. Cities, &c., may establish ordinances, &c., respecting weighing, &c., lighters, &c., employed in transporting stone, &c.

## AND PILOTAGE.

; 1869, 226; 1871, 351; 1872, 196, 221, 264.]

appointed by the governor with the aid, three persons to be commissioners for the term of three years unless and council. The commissioners now hold, hold their offices according to the provisions. When a vacancy occurs, a new full term.

Commissioners of pilots. Appointment, tenure of office, and removal of; 1865, 421, § 1.

shall grant commissions as pilots in ports, to such number of competent and as may deem necessary; and general commissions to pilots who may on examination prove to pilot two or more ports within the state. Not more than ten persons who are not port pilots may on examination prove competent for the service, and with authority to pilot vessels into the harbor.

to grant commissions as port and bay pilots. 1865, 421, § 2.

ports may take charge of vessels boarded and established as the limits of the peculiar pilotage ports, and pilot such vessels into their limits within their commission; and no other vessel shall have the right to interfere with the fees therefor. If the port of destination is included, may take charge of port, and in such case the pilotage of two pilots pro rata, according to the fee of each, to be adjusted in case of dismissioners or either of them; but the pilots shall receive not less than five dollars.

Duties, &c., of bay pilots. Fees. 1865, 421, § 2.

Ports with the regular port pilots within the limits of the peculiar pilotage ground of any said lines, if a pilot of said port is at the port, and in sight. But if no pilot is at the port, a general or bay pilot commissioned to pilot any vessel within said lines, pilot her into the harbor therefor. If in such case the vessel is not a regular pilot of the port, the general pilot shall receive pro rata pilotage, not less than provided in the preceding section.

Pilots not to interfere upon each other's limits; 1865, 421, § 2. 5 Met. 412. 1 Gray, 257.

within the limits of his commission, and within the two preceding sections, take charge

within limits, &c., to take charge of all ves-



of pilotage, which shall be in proportion to a vessel's draught of water. Such rules and regulations, after being approved by the governor and council, and published one week in one of the newspapers printed in the city or county to which they apply, shall be in full force. All existing rules and regulations not inconsistent herewith, shall continue in force until altered, amended, or repealed, as above provided. The commissioners shall, at least twice a year, at their own expense, publish all the regulations in force concerning the pilotage of the state; and shall cause the regulations and laws concerning pilots and pilotage to be observed and executed.

SECT. 14. They shall keep a record of all their official acts, and annually on or before the fifteenth day of October shall make a report to the secretary of the commonwealth of their proceedings for the year ending on the last day of the preceding month.

Commissioners to keep record.  
1855, 421, § 7.  
1857, 40.  
1858, 48

SECT. 15. Vessels of two hundred tons and under, sailing under a register in any of the navigable waters or ports of the state, shall be held to pay only one-half of the rates of pilotage to which vessels of that class are at the time liable.

Vessels of 200 tons and under, to pay half pilotage.  
1857, 221, § 1.

SECT. 16. No single-decked vessel of three hundred' and fifty tons and under sailing under a coasting license, shall be liable to pay compulsory pilotage for any navigable waters or ports of this state; but if the services of a commissioned pilot are voluntarily requested or accepted for the conduct of such vessel, they shall be paid for at the rates and in the manner prescribed by the regulations of the pilot commissioners.

Vessels exempt.  
1857, 221, § 4.

SECT. 17. Vessels taking steam towage into or out of a port or harbor of this state, by direction of the owner or master, shall pay full pilotage; but when steam towage is taken by request of the pilot, the vessel shall be liable to pay only seventy-five per cent. of the rates of pilotage to which such vessels would otherwise be liable.

Pilotage of vessels taking steam towage.  
1857, 221, § 3.

#### SHIP OWNERS, MARINERS, AND CHARTERERS.

[See 1872, 16.]

SECT. 18. No ship owner shall be answerable, beyond the amount of his interest in the ship and freight, for any embezzlement, loss, or destruction, by the master or mariners, of goods, wares, or merchandise, or any property put on board of his ship or vessel, nor for any act, matter, or thing, damage, or forfeiture, done, occasioned, or incurred, by the master or mariners, without his privity or knowledge.

Ship owners, how far answerable for embezzlement, &c.  
R. S. 32, § 1.  
11 Mass. 99.  
See 1872, 16.  
14 Gray, 288

SECT. 19. If such embezzlement, loss, or destruction, is suffered by several freighters or owners of goods, wares, or merchandise, or any property whatever, on the same voyage, and the whole value of the ship or vessel and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the ship, in proportion to their respective losses; and for that purpose, the freighters and owners of property, and the owners of the ship or vessel or any of them, may prosecute a suit in equity for a discovery of the amount of the loss or damage, and of the value of the ship and freight, and for the equal distribution and payment of the sum for which the owners of the ship may be liable, among the parties entitled to the same.

Contribution for embezzlement, loss, &c., in certain cases.  
R. S. 32, § 2.

SECT. 20. The charterer of a vessel, if he navigates such vessel at his own expense, shall be deemed the owner within the meaning of the two preceding sections.

Charterer to be deemed owner, &c.  
R. S. 32, § 3.

SECT. 21. Nothing contained in the preceding sections, shall take away or affect the remedy to which a party is entitled against the master or mariners, on account of the embezzlement, loss, or destruction, of goods, wares, or merchandise, or any property, on board of a ship or vessel, or on account of fraud or malversation of such master or mariners.

Preceding provisions not to affect other remedies.  
R. S. 32, § 4.

boarding certain  
vessels without  
leave. Penalty.  
187, 189, §§ 1, 3.

SECT. 22. Any person except a pilot who attempts to board a vessel arriving at or departing from Fall River Harbor, or the harbor of Buzzards Bay, before such vessel has been made fast, or after such vessel has left, without leave from the master or person having charge in writing from her owners or agent, shall be fined not more than fifty dollars for each offence.

resisting when  
detained, &c.  
Penalty.  
187, 189, §§ 2, 3.

SECT. 23. Whoever without such leave, boards a vessel in either of said harbors, or attempts to do so by a person having charge, or having boarded such vessel refuses to obey the order so to do by the person having charge, shall be fined not more than a sum not exceeding fifty dollars.

enticing crew to  
leave, &c.  
Penalty;  
187, 189, § 4.

SECT. 24. Whoever entices or persuades, any member of the crew of a vessel to leave the vessel before the expiration of his term of service thereon, shall be fined not more than fifty dollars for each offence.

§ 74.76

persons to  
leave who have  
received advance-  
ments.  
187, 189, § 5.

SECT. 25. Whoever knowingly allows a person who has shipped on a voyage to receive advanced wages therefor, willfully to defraud the owner of such voyage, shall forfeit a sum not exceeding fifty dollars.

seamen exempt  
from arrest for  
debts to landlord,  
&c.  
189, 225.

SECT. 26. No seaman or marine shall be liable to arrest on mesne process to any landlord or boarding-house keeper, or to any boarding-house keeper detain, or have any other property of such seaman or marine laid in the performance of said process, unless the value of the property is not exceeding two hundred dollars.

penalties, how  
incurred.  
187, 189, § 6.

SECT. 27. When either of the offences mentioned in the foregoing sections is committed in Boston Harbor, or in the police court of Boston, or in Salem Harbor, in the police court of Salem, or in Fall River Harbor, in the police court of Fall River, or in Bedford or Fairhaven, or in the harbor of Buzzards Bay, or in the police court of New Bedford, the offender may be arrested without warrant, and may be committed to the city where the offence was committed, or he shall be forthwith brought before the court.

harbor limits.  
187, 189, § 7.  
Met. 829.  
Met. 874.  
Gen. 868.

SECT. 28. For the purposes of this act, the limits of Boston Harbor, for vessels bound to or from Harding's Rock to the Outer Head, and said harbor shall include the waters of the town of Freetown to Rhinecliff; the outer limits of Salem Harbor shall be the chops of said harbor; the harbor of Taunton Great River and the waters of the town of Freetown to Rhinecliff shall be considered one harbor, the outer limits thereof shall be the outer limits of said harbor.

word "vessel"  
defined.  
187, 189, § 7.

SECT. 29. The word vessel in this act shall include vessels propelled by steam.

#### VESSELS AND BOATS TRAVELLING

weighers of  
vessels, &c.  
H. 31, § 1.  
Met. 56.  
c. § 29.

SECT. 30. The mayor and aldermen of the towns where lighters or other vessels are used, shall annually appoint more weighers of vessels, who shall



vessel employed in transporting shall be marked on the stem of the vessel, with stationary marks in length, and two and a half inches and sufficient iron bolts driven and riveted into said bar iron, at a distance in feet, inches, and parts of inches, from the lower edge of the marks; which marks shall be not less than four inches in length for every four tons above said lighters, of 4, 8, 12, 16, 20, and so on. Said figures shall express the carrying when the lower part touches the water: and all the marks shall be of lead or copper, fastened on the

Lighters, &c.,  
to be marked.  
R. S. 31, § 2.

stem and stern post of each vessel with sufficient nails not less than one inch in length.

SECT. 32. Each weigher, when thereto requested, shall furnish the requisite marks and nails, and shall cause lighters and other vessels to be weighed and marked in conformity with the provisions of the preceding section; and during the time of weighing and marking them, all persons employed on board shall be stationed between the bulk head and the fore chains. He shall keep a correct account of the distance of each mark below the stationary marks, in feet, inches, and parts of inches, in a book provided for that purpose, and give a certificate thereof expressing the distance, to the master of every such vessel.

Duty of weighers.  
R. S. 31, § 3.

SECT. 33. In taking the tonnage of every such vessel, a deduction may be made of one ton, for every inch that the light-water marks may be under water, after such vessel has discharged her loading.

Deduction, when may be made.  
R. S. 31, § 4.

SECT. 34. Every person on board of such vessel, who does not keep within the bounds of the bulk head and fore chains during the time of taking her marks, or while any weigher is employed in weighing or marking, unless in case of absolute necessity, shall forfeit a sum not exceeding twenty dollars for each offence.

Persons on board, where to keep while marks are being taken.  
R. S. 31, § 5.

SECT. 35. Such vessels shall have their marks examined annually in June, by a sworn weigher, and if the marks agree with their former certificates he shall certify the same accordingly. Otherwise he shall keep a record of the marks, to be used as evidence against the vessel in any prosecution under the provisions of this act.

Marks to be annually examined.  
R. S. 31, § 6.  
11 Met. 50.

SECT. 36. The owner or master of a vessel shall be liable to pay five cents for every ton of such vessel, for the marks, nails, and other necessary articles, and for the services required to weigh the vessel.

Fees.  
R. S. 31, § 7.

SECT. 37. Any owner or master of a vessel who neglects to have his marks examined, according to the provisions of this act, shall forfeit three hundred dollars for each offence.

Penalty for neglecting to have lighters weighed.  
R. S. 31, § 8.

SECT. 38. Any owner or master of a vessel who places any such mark contrary to the provisions of this act, shall forfeit a sum not exceeding fifty dollars for each offence.

Penalty for falsely placing marks, &c.  
R. S. 31, § 9.

SECT. 39. The city or town in which any such vessel is employed in transporting goods, shall establish ordinances respecting the inspection and weighing of such vessels, and the appointment and duties of inspectors, and other officers, neces-

Cities, &c., may establish ordinances, &c., respecting weighing, &c., lighters, &c., employed in trans-

porting stone,  
 &c.  
 1848, 808, §§ 1, 2.

sary to carry the same into e  
 thereof, not exceeding those  
 seven, and thirty-eight; whi  
 regulate the subject matter t

## CH

### OF MONEY, BONDS, BILLS

#### MONEY OF ACCOUNT.

##### SECTION

1. The money of account of this state.
2. All accounts to be reduced to legal m

#### INTEREST OF MONEY.

3. Rate of interest to be six per cent.
4. Contracts not avoided by usury.
5. Party paying usury may recover thre  
 sum paid

#### BONDS.

6. Bonds of corporations negotiable.

#### BILLS OF EXCHANGE AND PROMISSORY N

7. Payment and protest of bills, &c.,  
 on Fast, Christmas day, &c.

#### MO

The money of  
 account.  
 R. S. 35, § 6.

SECTION 1. The money of  
 dollar, cent, and mill. Acco  
 accounts and proceedings in  
 to this regulation.

All accounts to  
 be reduced to  
 legal money.  
 R. S. 35, § 6.

SECT. 2. Nothing contain  
 affect an account, charge, or  
 other instrument, expressed  
 suit thereon the same shall b

#### INTI

##### [Sections 4

Rate of interest.  
 R. S. 35, § 1.  
 12 Pick. 586.  
 See 1868, 242.  
 1870, 292.

Contracts not  
 void by usury.  
 Forfeiture, &c.  
 R. S. 35, § 2.  
 1848, 199, § 1.  
 7 Pick. 40.  
 1 Met. 298, 498.  
 3 Met. 211, 523.  
 6 Met. 296.  
 7 Met. 14.  
 11 Met. 528.  
 12 Cush. 158.  
 9 Gray, 64.  
 10 Gray, 87.

Threefold may be  
 recovered, &c.  
 R. S. 35, § 3.  
 1848, 199, § 2.  
 1855, 194.  
 1 Met. 553.  
 7 Met. 525.  
 3 Gray, 226.  
 4 Gray, 598.

SECT. 3. The interest of  
 dollars, and no more, upon  
 same rate for a greater or les

SECT. 4. (S.) [No contra  
 with interest at a greater rat  
 shall be thereby rendered voi  
 contract or assurance it app  
 allowed by law has been  
 received, the defendant shall  
 forfeit threefold the amount c  
 and no more, and shall have  
 after deducting said threefol

11 Gray, 38, 250. 18 Gray, 157. 1 Al  
 6 Allen, 1, 816. 7 Allen, 59, 407. 6

SECT. 5. (S.) [When a g  
 law has been paid, the party  
 of contract or suit in equity  
 unlawful interest so paid, an  
 suit shall be prosecuted with

## BONDS.

SECT. 6. Bonds and other obligations under seal for the payment of money purporting to be payable to the bearer, or some person designated or bearer, or payable to order, issued by any corporation or joint stock company, shall be negotiable in the same manner, and to the same extent, as promissory notes.

Bonds of corporations.  
1852, 76.  
8 Gray, 575.  
See 1869, 181.  
1870, 292.

## BILLS OF EXCHANGE AND PROMISSORY NOTES.

[See 1890, 197; 1893, 201.] 1874, 2404

SECT. 7. Bills of exchange, drafts, promissory notes, and contracts, due and payable, or to be executed, on Sunday or Thanksgiving, East, or Christmas day, the twenty-second day of February, the fourth day of July, or on the following day when either of the two days last mentioned occurs on Sunday, shall be payable or performable upon the business day next preceding said days; and in case of non-payment or non-fulfilment, may be noted and protested upon such preceding day; but the holder or holders of such obligations need not give notice of the dishonor, non-payment, or non-fulfilment thereof, until the business day next following the days above specified.

Payment and protest of bills, &c., maturing on East, Christmas day, &c.  
1856, 113, §§ 1, 2  
See 1863, 182.  
1875-77

SECT. 8. Upon a promissory note payable on demand, a demand made at the expiration of sixty days from the date thereof, without grace, or at any time within that term, shall be deemed to be made within a reasonable time; and any act, neglect, or other thing, which by the rules of law and the customs of merchants is deemed equivalent to a presentment and demand on a note payable at a fixed time, or which would dispense with such presentment and demand, if it occurs at or within said term of sixty days, shall be deemed a dishonor thereof, and shall authorize the holder of such note to give notice of the dishonor to the indorser, as upon a presentment to the promisor and his neglect or refusal to pay the same. No presentment of such note to the promisor and demand of payment, shall charge the indorser, unless made on or before the last day of said term of sixty days.

When demand must be made, &c., to charge indorsers of notes on demand.  
1839, 121, § 2.  
11 Met. 400.  
See 1863, 265.

SECT. 9. The several indorsers of promissory notes payable on demand, upon due and seasonable notice of the dishonor of such notes, shall be liable in the same manner and to the same effect as upon the dishonor of promissory notes payable at a fixed time, and not otherwise.

Notes payable on demand, liability of indorser;  
1839, 121, § 3.  
4 Allen, 415.

SECT. 10. In any action by an indorsee against the promisor brought upon a promissory note made after the sixth day of May, eighteen hundred and thirty-nine, and payable on demand, any matter shall be deemed a legal defence which would be a defence to a suit thereupon if brought by the promisee: *provided*, that no matter arising after notice of the indorsement or transfer of such note is given to the promisor shall constitute a defence.

defence to suits on.  
1839, 121, § 1.  
1845, 68.  
1858, 70, § 1.  
6 Met. 518.  
9 Met. 367.  
11 Met. 309.  
8 Cush. 207.  
4 Gray, 148.

2 Allen, 527. 4 Allen, 415. 5 Allen, 390. 9 Allen, 45. 13 Allen, 123. 105 Mass. 503.

SECT. 11. When a bill of exchange, drawn or indorsed within this state and payable without the limits of the United States, (R.) [*excepting places in Africa beyond the Cape of Good Hope, and places in Asia and the islands thereof*], is duly protested for non-acceptance or non-payment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand, and damages at the rate of five per cent. upon the contents thereof, together with interest on the contents, to be computed from the date of the protest; and said amount of contents, damages, and interest, shall be in full of all damages, charges, and expenses.

Damages on bills payable beyond limits of U. S., except, &c.;  
R. S. 83, § 1.  
(R.) Stricken out.  
1863, 201, § 2.  
See 1863, 201, § 1.

SECT. 12. (R.) [When a bill of exchange, drawn or indorsed as mentioned in the preceding section, and payable at any place in Africa beyond the Cape of Good Hope, or any place in Asia or the islands thereof, is duly protested for non-acceptance or non-payment, every party liable

on bills payable beyond Cape of Good Hope, &c.  
R. S. 83, § 2.  
(R.) Repealed.  
1863, 201, § 2.



authority to sell or consign the same, ships or otherwise transmits or delivers it to any other person, such other person shall have a lien thereon for any money or merchandise advanced or negotiable security given by him on the faith of such consignment, to or for the use of the person in whose name such consignment or delivery was made; and for any money, negotiable security, or merchandise, received for the use of the consignee by the person in whose name such consignment or delivery was made; if such consignee had at the time of such advance or receipt probable cause to believe that the person in whose name the merchandise was shipped, transmitted, or delivered, was the actual owner thereof, or had a legal interest therein to the amount of said lien.

SECT. 4. When a consignee or factor having possession of merchandise with authority to sell the same, or having possession of a bill of lading, permit, certificate, or order, for the delivery of merchandise, with like authority, deposits or pledges such merchandise or any part thereof, or such document, with any other person as a security for money or merchandise advanced or a negotiable instrument given by him upon the credit thereof, such other person (if he makes such loans, advances, and exchanges, in good faith and with probable cause to believe that the agent making the deposit or pledge had authority so to do, and was not acting fraudulently against the owner of such merchandise) shall acquire the same interest in, and authority over, such merchandise and documents as he would have acquired thereby if the agent had been the actual owner thereof, notwithstanding he had notice of such agency.

SECT. 5. When such merchandise or document is accepted in deposit or pledge for an antecedent debt due from such consignee or factor; the person receiving the same shall thereby acquire no other or further right, or interest in, or authority over, or lien upon, the same, than the consignee or factor might have enforced against the actual owner.

SECT. 6. The provisions of the three preceding sections shall not affect the lien of a consignee or factor at law for the expenses and charges attending the shipment, transportation, and care, of merchandise intrusted to him; nor prevent the actual owner from recovering such merchandise from the consignee or factor previous to the pledge thereof, or from his assignees in case of his insolvency; nor prevent such owner from recovering any merchandise or document so deposited or pledged, upon tender of the money and restoration of the negotiable security or property so advanced to such consignee or factor, and upon tender of such further sum of money and restoration of such negotiable instrument or property as may have been advanced or given by the consignee or factor to the owner, or upon tender of a sum of money equal to the amount or value thereof; nor prevent him from recovering from the person with whom such merchandise may have been so deposited or pledged, any balance of money remaining in his hands as the proceeds of the sales thereof, after deducting the amount of the moneys or of the negotiable security so advanced thereon.

son having possession of merchandise with authority to sell, to have lien for advances, if, &c. 1849, 216, §§ 1, 2.

Pledgee of person having possession of merchandise or bill of lading with power to sell, to acquire rights of such person, if, &c. 1849, 216, § 3. 3 Allen, 491. 5 Allen, 419.

When pledge is for antecedent debt, pledgee to acquire no other right, &c. 1849, 216, § 4.

Limitations and restrictions on preceding sections. 1849, 216, § 5.



formity with the provisions of this section shall be deemed a general partnership.

SECT. 7. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, without the addition of the word company or any other general term. If the name of any special partner is used in such firm with his consent or privity, he shall be deemed and treated as a general partner, or if he personally makes any contract respecting the concerns of the partnership with any person except the general partners, he shall be deemed and treated as a general partner in relation to such contract, unless he makes it appear that in making such contract he acted as special partner only. If the firm consists of more than three general partners, all their names need not be inserted in the style of the firm.

Partnership style,  
&c.  
1860, 91.  
1868, 148.

*Repeal*  
1873 c 320

SECT. 8. During the continuance of any partnership under the provisions of this chapter, no part of the capital stock thereof shall be withdrawn, nor any division of interest or profits be made, so as to reduce such capital stock below the sum stated in the certificates before mentioned; and if at any time during the continuance or at the termination of the partnership, the property or assets are not sufficient to pay the partnership debts, then the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn, respectively.

Capital stock not  
to be withdrawn,  
&c.  
R. S. 84, § 8.

SECT. 9. All suits respecting the business of such partnership shall be prosecuted by and against the general partners only; except in those cases in which provision is made in this chapter that the special partners shall be deemed general partners, and that special partnerships shall be deemed general partnerships, in which cases all the partners deemed general partners may join or be joined in such suits; and excepting also those cases where special partners are held severally responsible on account of sums by them received or withdrawn from the common stock, as before provided.

Suits to be by  
and against the  
general partners,  
except, &c.  
R. S. 84, § 11.

SECT. 10. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution is recorded in the registry in which the original certificate, or the certificate of renewal or continuation of the partnership, was recorded, and in every other registry where a copy of such certificates was recorded; nor unless such notice is also published for six successive weeks in some newspaper printed in the counties where the certificates of the formation of such partnership were published according to the provisions of this chapter; and if there is no such paper at the time of such dissolution, then in some newspaper printed in the city of Boston.

Dissolution, how  
effected.  
R. S. 84, § 12.

*Repeal*  
1873 c 320

SECT. 11. In all cases not otherwise provided for in this chapter, the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

Liability of partners in other cases.  
R. S. 84, § 13.

## CHAPTER 56.

### OF THE UNAUTHORIZED USE OF TRADE MARKS AND NAMES.

#### Section

1. Trade marks of another not to be used without consent.
2. Penalty.

#### Section

3. No person to use another's name in business without written consent.
4. Supreme court may restrain such use.





# PTER 57.

## AND BANKING.

	<b>Section</b>
are of	43. Directors to be chosen annually by stockholders. Time when chosen.
	44. legislature may appoint.
	45. may be removed.
, &c.,	46. quorum of.
t such	47. to record notes, &c., offered for discount, and proceedings, &c. Penalty.
in an-	48. Special meetings.
th all	49. President.
	50. Cashier, &c.
of five	<i>Cashier and Loans to Officers.</i>
on in-	51. Cashier to give bond.
	52. when to call special meetings.
	53. not to be director, &c. Penalty.
etary.	54. Amount of liability of officers on notes, &c., limited.
	<i>Bills and Notes.</i>
	55. Banks to pay out no bills but their own.
	56. Amount of bills to be issued. Loans, where made.
chap-	57. Bills, how issued, and when corporation liable to redeem.
	58. Banks to pay altered bank-notes.
	59. Penalty for delay in payment of notes.
	60. Denominations of bank-notes that may be issued. Penalty.
: prof-	61. Banks may stamp, &c., counterfeit and worthless bills, &c.
f capi-	62. Liability of banks, &c., for not stamping, &c.
	63. Banks not to issue notes, &c., payable on a day certain, or with interest, except, &c. What deposits may bear interest.
owned	64. Bills to be first redeemed.
	65. Banks may replevy bills unlawfully detained.
ck,	66. Proceedings in such case.
	<i>Loans and Discounts.</i>
22. State may take stock in banks.	67. Notes not to be issued, to be kept from circulation.
23. Limit of loans on its own stock.	68. Loans, &c., payable on demand, &c. Penalty.
24. Banks not to hold their own stock, except, &c.	69. Banks not to take more than six per cent interest, and exchange. Penalty.
	70. All bills, &c., redeemable, in specie on demand, at banking-house. Penalty.
	71. Proceeding section not to extend to certain checks and drafts.
	72. Banks may draw for balances.
	<i>Taking Land, &amp;c., on Execution.</i>
	73. Real estate of banks may be sold on execution.
	74. Officer may adjourn sale.
	75. Lands mortgaged to banks may be seized on execution, &c.
	76. Cashier or clerk to furnish copies of notes, &c., to officer levying, &c.
	77. No transfer of such note or mortgage after notice, &c., to be valid, except, &c.
	<i>Liability of Stockholders.</i>
	78. In case of deficiency, &c., stockholders liable.
	79. Liability of stockholders for redemption of bills.
	80. at expiration of charter.
	81. Stockholders may compel contribution.



advice and consent of the council, and subject to removal in like manner. Before the first day of June in each year one member of the board shall be appointed for the term of three years, who shall hold his office until his successor is appointed and qualified. Upon the occurrence of a vacancy before the expiration of a term an appointment shall be made for the remainder of the term. The commissioners now in office shall hold their respective offices according to the tenor of their respective commissions, unless removed as aforesaid.

SECT. 2. Before entering on the duties of their office the commissioners shall severally be sworn. They may appoint a clerk of their board, prescribe his duties, and fix his compensation, when in their opinion the public good demands such appointment.

SECT. 3. Said commissioners, or two of them, shall visit every bank in [the] state within one year after it goes into operation, and every bank obtaining leave to increase its capital stock within one year after the additional stock is paid in; and shall visit every bank, savings bank, and institution for savings incorporated by authority of this state, once in every two years, and as much oftener as they deem expedient; visiting as nearly as they are able one-half of all such institutions each year. At such visits they shall have free access to the vaults, books, and papers, and shall thoroughly inspect and examine all the affairs of each of said corporations, and make such inquiries as may be necessary to ascertain its condition, ability to fulfil all its engagements, and whether it has complied with the provisions of law. They shall preserve in a permanent form a full record of their proceedings, including a statement of the condition of each bank.

SECT. 4. When the charter of a bank has been annulled by an act of the legislature or by the surrender of the stockholders, the commissioners shall, in the manner and with the powers and duties set forth in the preceding section, visit such bank once at least in every twelve months, so long as it continues a body corporate.

SECT. 5. The commissioners or either of them may summon and examine all directors, officers, or agents, of any corporation mentioned in section three, and such other witnesses as they think proper, in relation to the affairs, transactions, and condition, of such corporation, and for that purpose may administer oaths; and whoever refuses without justifiable cause to appear and testify when thereto so required, or obstructs a commissioner in the discharge of his duty, shall be punished by fine not exceeding one thousand dollars, or imprisonment for a term not exceeding one year.

SECT. 6. If any five or more persons who are officers, stockholders, or creditors, of any bank or institution for savings, make and sign a certificate, under oath, setting forth their interest and the reasons for making such examination, directed to the commissioners, requesting them to examine such bank or institution for savings, the commissioners shall proceed forthwith and make a full investigation of the affairs of such corporation in the manner before provided.

SECT. 7. If, upon examination of any such corporation, a majority of the commissioners are of opinion that the same is insolvent, or that its condition is such as to render its further progress hazardous to the public or those having funds in its custody, they shall apply, or if upon such examination they are of opinion that such corporation has exceeded its powers, or failed to comply with any of the rules, restrictions, or conditions, provided by law, they may apply to one of the justices of the supreme judicial court to issue an injunction to restrain such corporation in whole or in part from further proceeding with its business until a hearing can be had. Such justice shall forthwith issue process for such purpose, and, after a full hearing of the corporation, may dissolve or modify the injunction or make the same perpetual, and make such orders

lished; tenure of office.  
1861, 127, § 1.

Commissioners shall be sworn. May appoint clerk;  
1861, 127, §§ 5, 7.

to visit banks, savings institutions, &c., once in two years; powers and duties. To make record;  
1861, 127, § 2

to visit banks whose charters have been annulled;  
1888, 14, §§ 2, 3.  
1889, 27, § 1.  
1843, 93, § 1.

may summon and examine under oath all directors, &c.;  
1861, 127, § 3.

shall examine any bank, upon request of five or more officers;  
1861, 127, § 4.

to apply to S. J. C. for injunction upon insolvent banks.  
1861, 127, § 5.  
3 Met. 531.  
7 Met. 240.  
9 Met. 194.  
11 Met. 129.  
1 Gray, 352.  
12 Gray, 233.  
3 Allen, 42.  
4 Allen, 8.

See 1890, 167.  
1890, 219, § 6.  
1862, 131.



when by the returns required by sections ninety-three and ninety-four it appears that the weekly or monthly average of specie required thereby to be returned by a bank is less than that amount, such bank shall make no new loans until its specie is restored to such amount. Specie specially deposited by a bank in Boston in the bank of deposit of the Boston Clearing House, and balances payable on demand due from other banks to banks out of Boston or in South Boston which may be applied to the redemption of their bills, shall be deemed specie in the bank for the purposes of this section.

SECT. 20. When authority is granted to a bank to increase its capital, such increased capital may be paid in such instalments, not exceeding four, as the directors determine; and each instalment shall be regarded as a part of the capital of the bank as soon as it is paid in and a certificate thereof forwarded to the secretary of the commonwealth according to the provisions of the act authorizing the increase.

SECT. 21. No person shall directly or indirectly hold or own more than one-half of the amount of the capital stock of a bank, exclusive of stock which he holds as collateral security.

SECT. 22. In addition to the capital stock to which a bank is entitled, the state may subscribe thereto to an amount not exceeding fifty per cent. of its authorized capital, when provision is made therefor by law; and the state, from the time of making any payment towards such capital stock, shall be entitled to its proportionate share of the profits and dividends.

SECT. 23. No bank shall have owing to it at one time, on loans made on a pledge of its own stock, a greater amount than one-half of its capital actually paid in.

SECT. 24. A bank which purchases or holds its own stock except as security for debts, or neglects to sell all stock so received as security within six months after it has become the property of the bank, shall for each offence forfeit five hundred dollars.

SECT. 25. The debts of a bank shall not at any time exceed twice the amount of its capital stock actually paid in, exclusive of sums due on account of deposits not bearing interest; nor shall there at any time be due to a bank more than double the amount of its capital stock actually paid in.

SECT. 26. Debts due from one bank to another, including bills of the bank so indebted and loans to the state not exceeding five per cent. of the capital stock of the bank, shall not be deemed debts due within the meaning of the preceding section.

SECT. 27. If a bank shall become indebted beyond the amount allowed by the two preceding sections, the directors under whose administration it shall happen shall be liable for the excess in their private capacities; and an action of contract may in such case be brought against them or any of them, their or any of their heirs, executors, or administrators, by any creditor of the bank, or such creditor may have a remedy by a suit in equity.

SECT. 28. Directors dissenting or absent when such excess of debts is authorized or contracted, may exonerate themselves from liability, by forthwith giving notice of the fact and of their absence or dissent to either of the bank commissioners.

SECT. 29. The provisions of the two preceding sections shall not be construed to exempt any bank, or the lands, goods, or chattels, of the same, from liability for such excess.

SECT. 30. No bank shall use or employ any of its moneys, goods, chattels, or effects, in trade or commerce; but any bank may sell all kinds of property held by it in pledge; and if the proceeds of such sale are more than sufficient to repay the sum loaned on such pledge, together with interest and expenses, the surplus shall upon request be

What to be deemed such specie.

1856, 86, § 1.

1853, 69, § 1.

1853, 185.

1859, 218.

4 Allen, 1.

See 1863, 213, § 1.

1866, 147, § 1.

Increased capital, how paid in, &c.  
1836, 263.

No person to own more than half the stock.  
R. S. 36, § 18.

State may take stock in banks.  
R. S. 33, § 42.

Limit of loans on its own stock.  
R. S. 36, § 6.

Banks not to hold their own stock, except.  
1833, 196, § 7.  
1861, 339, § 1.

Limit of debts.  
R. S. 36, § 9.  
4 Pick. 314.  
4 Allen, 15.  
See 1861, 213.  
1862, 4.

Preceding section, how construed.  
R. S. 36, § 10.  
1864, 7.

Liability of directors, when debts exceed, &c.  
R. S. 36, § 11.  
1862, 312.

Absent, &c., directors, how exonerated.  
R. S. 36, § 12.  
1833, 196, § 6.  
1861, 127.

Corporations to remain liable.  
R. S. 36, § 13.

Banks shall not trade, &c.  
R. S. 36, § 14.  
7 Mass. 433.  
See Ch. 151, §§ 9-11.  
See 1863, 174.  
1864, 130.



SECT. 39. A cashier who violates any provisions of section thirty-two, and any officer of a bank who violates any provision of the four preceding sections, shall for each offence forfeit a sum not exceeding five hundred dollars.

Penalty on officers.  
1867, 243, § 7.

*Directors.*

SECT. 40. No bank shall have less than seven nor more than twelve directors, the number to be determined by the by-laws.

Directors;  
R. S. 36, § 19.  
2 Met. 163.  
See 1860, 209, § 1.  
1860, 214.  
1860, 218.

SECT. 41. No person shall be a director of a bank unless he is a stockholder holding unpledged stock therein and a citizen of and resident in the state, nor shall any person be a director in two banks at the same time.

to be citizens,  
&c., of this state;  
R. S. 36, § 17.  
1868, 196, § 6.  
where to reside,  
&c.;

SECT. 42. A majority of the directors of every bank shall reside or have their places of business within the county where the bank is established, or within ten miles of the bank. This and the two preceding sections shall not apply to the Bank of Mutual Redemption.

R. S. 36, § 18.  
1853, 401.  
1855, 450, § 8.  
1856, 126, § 8.

SECT. 43. The directors shall be chosen annually by ballot, at a meeting of the stockholders on any day in October designated in the by-laws of the bank where there is but one bank in a city or town; and where there is more than one, on successive days, beginning on the first Monday of October in the order of the bank abstract for the year preceding, or in case of omissions in said abstract, in the order of the dates of the charters of the banks so omitted, on days next succeeding the meeting of the bank in the same city or town last named in said abstract; and said meeting shall be held at such hour and place within the city or town as the directors appoint.

to be chosen  
annually. Time  
when chosen;  
R. S. 36, § 22.  
1838, 196, § 1.  
1843, 98, § 10.  
1848, 121, § 1.

SECT. 44. In addition to the directors to be chosen by the stockholders, the legislature may from time to time appoint a number of directors in such proportion to the whole number as the sums paid by the state towards the stock of the bank bear to the whole amount of the stock actually paid in.

legislature may  
appoint;  
R. S. 36, § 43.

SECT. 45. Directors chosen by the stockholders may be removed at any special meeting of the stockholders, the notification of which states that a change in the board of directors is contemplated; and vacancies in the board may be filled at a special meeting.

may be re-  
moved;  
R. S. 36, § 24.  
1853, 196, § 2.

SECT. 46. A majority of the directors shall always be necessary to constitute a quorum for doing business.

quorum of;  
R. S. 36, § 21.

SECT. 47. The directors of every bank shall cause a book to be kept in which shall be entered all notes and bills offered them for discount, specifying all that are discounted; they shall also keep a record of the names and proceedings of all the directors present at any meeting for discounts or other official business; and every bank the directors of which fail to comply with the provisions of this section shall for each neglect forfeit five hundred dollars.

to record notes,  
&c., offered for  
discount, &c.  
1838, 196, § 9.  
1848, 98, § 5, 8.  
1851, 339, § 1.  
See 1863, 102.

SECT. 48. They may call special meetings of the stockholders as often as the interest of the corporation requires.

Special meetings.  
R. S. 36, § 25.

SECT. 49. They shall choose one of their own number to act as president, and may make him such compensation as they think reasonable.

President.  
R. S. 36, § 20.  
6 Allen, 207.

SECT. 50. They shall appoint a cashier, and may appoint clerks and other officers for conducting the business of the bank; all of whom shall be removable at the pleasure of the directors.

Cashier, &c.  
R. S. 36, § 26.

*Cashier and Loans to Officers.*

SECT. 51. The cashier before he enters on the duties of his office shall give a bond or bonds, with two or more sureties to the satisfaction of the directors, conditioned for the faithful performance of the duties of his office; and in no case shall bonds be taken for a less sum than twenty thousand dollars.

Cashier to give  
bond.  
R. S. 36, § 27.  
1838, 196, § 3.  
3 Pick. 335.  
4 Pick. 314.  
16 Gray, 478.  
5 Allen, 413.  
8 Allen, 371.  
12 Allen, 243.





so written upon or stamped. And if a bank or bank officer, by mistake or inadvertence, and not fraudulently, so writes upon or stamps a bank bill which is not a counterfeit, or altered, or worthless bill, such bank shall be liable to pay to the holder its value on demand.

SECT. 63. No bank shall make or issue a note, bill, check, draft, acceptance, certificate, or contract, in any form whatever, for the payment of money at a future day certain, or with interest, except for money borrowed of the state or of an institution for savings incorporated under authority of the state, or money deposited by an assignee as provided in section forty-nine of chapter one hundred and eighteen; and except also that all debts due to one bank from another, including bills of the bank indebted, may draw interest; and banks may contract with cities and towns in this commonwealth for the payment or receipt of interest, at a rate not exceeding that established by law, upon an account current of money deposited with and drawn from them by said cities and towns.

SECT. 64. The property and effects of every bank shall be first applied to the redemption of its bills in circulation.

SECT. 65. A bank may, in like manner as in case of goods unlawfully detained, cause to be replevied any of its bills or notes issued as currency, detained by the holder after it has paid or tendered to him the amount due thereon, together with any interest and costs accrued; if they are so secreted or withheld that they cannot be replevied, remedy may be had in equity, as in case of goods so secreted or withheld.

SECT. 66. If upon the hearing it appears that the full amount of principal, interest, and costs has been paid or tendered to the defendant, the plaintiff's damages for the detention shall be assessed by the jury, or by the court upon a hearing in equity, and the plaintiff shall recover the same with his costs of suit, in which case the defendant shall have judgment for any sum tendered and not received. But if it appears that said bills and notes were withheld for any amount due to the defendant beyond the amount paid or tendered, he shall have judgment for the sum due at that time, and unpaid, with interest and costs.

### *Loans and Discounts.*

[See 1880, 209.]

SECT. 67. A bank which loans or issues any of its notes or bills with an agreement or understanding that such notes or bills shall not be put into immediate unrestricted circulation, or that they shall not be returned to the bank within a limited time, shall forfeit a sum not exceeding one-half nor less than one-fourth part of the amount so loaned or issued.

SECT. 68. No bank shall directly or indirectly make a loan or discount unless the amount of the loan or the proceeds of the discount are payable by the bank on demand in specie or in the bills of the bank; and every loan or discount made contrary to the provisions of this section shall be void; and the bank for each offence shall forfeit five hundred dollars.

SECT. 69. No bank shall take a greater rate of interest or discount on any note, draft, or security, than six per cent. a year; but such interest or discount may be calculated and taken according to the established rules of banking; and in discounting drafts, bills of exchange, or notes of hand, the bank may in addition to such interest charge the then existing rate of exchange between the place where such draft, bill, or note is discounted and the place where it is payable. For every offence against the provisions of this section the bank offending shall forfeit five hundred dollars.

SECT. 70. Every bank which issues a bill, note, check, or draft,

Banks not to issue certain notes, &c. What deposits may bear interest. R. 8. 36, § 57. 1842, 98. 22 Pick. 181. 4 Allen, 1.

Bills preferred. 1 Gray, 382. See 1880, 107.

Banks may replevy bills unlawfully detained. 1859, 118, § 1.

Proceedings in such case. 1859, 118, § 2.

Bills not to be issued to be kept from circulation. 1837, 224, § 1. 8 Met. 587. 4 Allen, 1.

Loans, &c., payable on demand, &c. R. 8. 36, § 58. 7 Cush. 545. 10 Cush. 22. 6 Gray, 458. 11 Gray, 250.

Banks not to take more than six per cent. interest, and exchange. R. 8. 33, §§ 59, 60. 1838, 198, § 4. 12 Pick. 521. 11 Gray, 250.

Bills, &c., when,



effect against the purchaser under such sale, but the same shall be void except only as between the bank and the person to whom a bank makes such sale or transfer, his heirs, executors, administrators, or assigns.

*Liability of Stockholders.*

SECT. 78. If a loss or deficiency of the capital stock in a bank arises from the official mismanagement of the directors, the stockholders at the time of such mismanagement shall, in their individual capacities, be liable to pay the same; but no stockholder shall be liable to pay a sum exceeding the amount of the stock actually held by him at that time.

In case of deficiency, &c., stockholders liable.  
R. S. 38, § 30.  
23 Pick. 112.  
9 Met. 182.

SECT. 79. Stockholders in a bank at the time when it stops payment shall be liable in their individual capacities, for the payment and redemption of all bills issued by such bank and remaining unpaid, in proportion to the stock they respectively held at the time aforesaid; and stockholders, who, having reason to believe that a bank is about to stop payment, transfer their shares, or any part thereof, with intent to avoid this liability, shall be subject to the same, on the shares so transferred.

Liability of stockholders for redemption of bills;  
1849, 32, § § 1, 2  
3 Allen, 43.  
See 1860, 167.  
1865, 163, § 4.

SECT. 80. Stockholders in a bank, at the time its charter expires, shall be liable, in their individual capacities, for the payment and redemption of all bills issued by such bank and remaining unpaid; and stockholders, who, having reasonable cause to believe such bank insolvent, have transferred any of their stock within six months before such expiration, with intent to avoid this liability, shall be subject to the same on the shares so transferred.

at expiration of charter.  
R. S. 38, § 31.  
1849, 32, § 3.  
23 Pick. 334.  
9 Met. 185.  
10 Met. 524, 569.  
12 Met. 363.  
1 Gray, 399.  
See 1865, 163, § 4.

SECT. 81. A stockholder of a bank who is obliged to pay any debt or demand against said bank out of his individual property, may have a suit in equity to recover the proportional parts of such sums of money so paid from the other stockholders liable for the same, and such damages and costs as the court may decree.

Stockholders may compel contribution.  
R. S. 38, § 32.  
See 1865, 163, § 4.

SECT. 82. A corporation being a stockholder in a bank, shall be liable in its corporate capacity to pay any loss or deficiency of the capital stock in such bank arising from the official mismanagement of its directors, and for the payment and redemption of all bills issued by said bank, and remaining unpaid when its charter expires, or when it has stopped payment, in the same manner as individual stockholders are liable in their individual capacities; and such corporation may compel a contribution from other stockholders in the manner prescribed in the preceding section.

Corporations owning bank stock to be under same liabilities, &c., as individuals.  
R. S. 38, § 33.  
1849, 32, § 1.

*Loans to Commonwealth.*

SECT. 83. Upon requisition of the legislature each bank shall loan to the state a sum not exceeding five per cent. of its capital stock at any one time, reimbursable by five annual instalments or at any shorter period at the election of the state, with the annual payment of interest at rate not exceeding five per cent.; but the state shall not be entitled to demand of any bank loans which together at any one time exceed one-tenth part of its capital.

Banks to loan to commonwealth.  
R. S. 38, § 35.  
See 1863, 254, § 7.  
1865, 147, § 2.

SECT. 84. When the treasurer is authorized by an act or resolve of the legislature to borrow money of a bank, he shall give notice in writing to the president or cashier thereof, of the amount to be furnished by such bank, and shall require a loan of the same conformably to the provisions of this chapter; and thereupon the bank shall forthwith place to the credit of the state the amount of the loan required.

Treasurer to give notice to banks;  
R. S. 38, § 36.

SECT. 85. The treasurer in making demand upon the banks for such loan shall equalize as far as shall be conveniently practicable the amount of such demand among the several banks within the state, having reference to the amount of the obligation of each bank to loan to the state,

to apportion amount of loans required.  
R. S. 38, § 37.



on the first Monday of each month transmit to the secretary, according to a form to be so furnished, a like statement, except that banks out of Boston shall not include in their returns specie deposited in the bank of deposit of the Boston Clearing House, and all the banks mentioned in this section shall state the balances payable on demand due from other banks, which may be applied to the redemption of their bills; which returns shall be based upon the condition of the several banks on each Saturday since their preceding return.

Monthly returns of banks out of Boston, and in South Boston. 1854, 307, §§ 3, 7. 1856, 95. 1858, 69, § 1. 1859, 165. 1859, 213. See § 19.

SECT. 95. Every bank in Boston except in that portion called South Boston neglecting to comply with the requirements of section ninety-three shall for each neglect forfeit five hundred dollars; and every other bank neglecting to comply with the requirements of the preceding section shall, unless the secretary and treasurer are duly satisfied that said returns were duly made, properly directed to the secretary and deposited in the post office where said bank is situated, and that there was no neglect on the part of the officers of the bank, for each neglect forfeit twenty-five dollars, and the secretary shall immediately notify such bank of its neglect, and if such neglect continues ten days from said first Monday of any month, the bank shall forfeit five hundred dollars.

Penalty for neglect. 1856, 101, § 1, 2

SECT. 96. The secretary shall cause to be published in one or more of the Boston daily papers an abstract of the returns of said banks in Boston, on the Wednesday after the same are received, and a like abstract of the returns of other banks as soon as may be after the receipt of the same; and he shall have regard to prices at which offers may be made to make the required publication of such abstracts. All bills therefor shall be approved by the governor and council.

Secretary to publish abstract of returns, &c. 1854, 307, §§ 2, 4, 5.

SECT. 97. The secretary shall transmit to each bank blank forms for the returns required by sections ninety-three and ninety-four, and the banks shall adopt said forms in making the returns.

Blanks to be furnished. 1854, 307, § 7.

### *Annual Returns.*

[See 1864, 190, § 8.]

SECT. 98. The cashier of each bank shall annually make a return of the state of such bank as it existed at seven o'clock in the afternoon of any Saturday the governor may direct; and he shall transmit the same as soon as may be, not exceeding fifteen days thereafter, to the secretary of the commonwealth; which return shall specify the amount due from the bank, designating in distinct columns the several particulars included therein, and shall also specify the resources of the bank, designating in distinct columns the several particulars included therein; which return shall be in substance as follows, to wit:—

Cashiers to make returns annually. R. S. 36, §§ 65, 67. 1837, 65. 1842, 49. 1854, 309. 1856, 95. 1858, 115, §§ 1, 2. 1859, 213.

*State of      Bank, on the      Saturday of      18      , 7 o'clock, P. M.*

*Form of return.*

#### **DUE FROM THE BANK.**

1. Capital stock. 2. Bills in circulation of denomination of five dollars and upwards. 3. Bills in circulation of denomination less than five dollars. 4. Net profits on hand. 5. Balances due to other banks. 6. Cash deposited, including all sums whatsoever due from the bank, not bearing interest, its bills in circulation, profits and balances due to other banks excepted. 7. Cash deposited bearing interest. 8. Total amount due from the bank.

#### **RESOURCES OF THE BANK.**

9. Gold, silver, and other coined metals in its banking house, including, in case of Boston banks, specie in the bank of deposit of the Boston Clearing House. 10. Real estate. 11. Bills of banks in this and of the other New England states. 12. Balances due from other banks. 13. If the bank is in South Boston, or any place out of Boston, state balances in any other bank to be applied to the redemption of bills, and payable on demand. 14. Amount of all debts due, including notes, bills of exchange, and all stocks and funded debts of every description, excepting the balances due from other banks. 15. Total amount of the resources of the bank. Rate, amount, and date of dividends since last return. Amount of reserved profits at the time of declaring the last dividend. Amount of debts due to the bank, secured by a pledge of its stock. Amount of debts due and not paid, and considered doubtful. Amount of liabilities of directors.



time of holding the same, and published in one or more newspapers printed in the city or town, or if there is no such paper then in one or more newspapers printed in the county where such bank is situated, for three weeks before the time of such meeting, may, by a majority of the votes all the stockholders could cast if present, or, when the bank commissioners or a majority of them have so recommended, by a majority of the votes cast at such meeting, surrender and thereby annul the charter of such bank; but such annulling shall not exempt the stockholders from any liability imposed by this chapter or chapter sixty-eight.

SECT. 106. Every bank availing itself of the provisions of the preceding section shall be exempt from the bank tax from the time a majority of the bank commissioners report to the governor that such bank may with safety to the public close its concerns under the provisions of section thirty-six of chapter sixty-eight.

SECT. 107. Any stockholder or creditor of a bank that has surrendered its charter, may for the purpose of limiting the time beyond which its liabilities shall be barred, apply by petition to the supreme judicial court, which shall have as full power to fix such limitation as if the bank were before it by a creditors' bill in equity, or under chapter sixty-eight.

SECT. 108. When the charter of a bank expires or is forfeited, or when a bank closes its business, the members of the board of directors last in office shall forthwith deliver up all their plates and dies to the court of record having jurisdiction of the offence of counterfeiting in the county in which the bank has been established, and the court shall cause them to be disposed of in such manner as shall be deemed expedient in order to prevent their use for any unlawful purpose. A member of the board who wilfully refuses or neglects so to do shall be punished by a fine not exceeding five hundred dollars.

#### *New Privileges.*

SECT. 109. If new or greater privileges are granted to any bank hereafter created by charter, every such bank in operation at the time of such grant shall be entitled to the same privileges, and subject to the same liabilities.

#### BANKS ORGANIZED UNDER GENERAL LAWS.

SECT. 110. Ten or more persons and their successors may become a body corporate for the purpose of carrying on the business of banking on the terms and conditions prescribed in this chapter, and in all general laws which are at any time in force in this state in relation to banks and banking, so far as they are not inconsistent with the following sections.

SECT. 111. The capital stock of each bank thus established shall not be less than one hundred thousand nor more than one million dollars, divided into shares of one hundred dollars each, transferable only at the banking house and on the books of the bank. The stock shall be paid in gold or silver money, one-half before the bank goes into operation and the remainder within one year thereafter; subject to which provisions it shall be paid in such instalments and at such times as the stockholders direct.

SECT. 112. Before a corporation commences business, the president and directors shall under their hands and seals make a certificate, which shall specify:—

First, the corporate name, which shall be different from that of any bank previously organized or incorporated in this state;

Second, the name of the city or town in which it is to be located;

Third, the amount and number of shares of its capital stock;

Fourth, the name, place of residence, and number of shares, of each stockholder;

Not to exempt from liability.  
1888, 108, §§ 1, 2.  
1841, 113, §§ 1, 2, 8.  
See 1868, 244.  
1864, 190, § 2.

Banks exempt from further tax, when, &c.  
1888, 108, § 2.

S. J. C. may limit time of liability of banks surrendering charters.  
1848, 251.

Plates and dies to be delivered to court, when bank charter expires.  
Penalty.  
1856, 168, §§ 2, 3.  
See 1860, 206, § 6.  
1863, 85.

New privileges extended to all banks.  
R. S. 86, § 69.

Who may be a corporation for banking purposes.  
1851, 267, §§ 1, 12.  
1852, 236, § 1.  
1859, 267.

Amount of capital stock. How paid in.  
1851, 267, §§ 1, 2.

Certificate to be made, &c.  
1851, 267, § 2.

Fifth, the time when it is to go into

The certificate shall be acknowledged and recorded in the registry of deeds the bank is to be located, and a copy secretary of the commonwealth. Certified by the register or secretary at dence in all cases.

May increase capital.  
1851, 287, § 4.

SECT. 113. A bank so organized and its stockholders increase its capital in those prescribed in the preceding section.

Shall carry on business only at banking house. Forfeiture of privilege.  
1851, 287, § 5.

SECT. 114. Such bank shall carry usual business of banking. If after re-inafter provided it neglects or omits to elect or omission shall work a forfeiture proceeded against as provided in section.

Auditor to obtain engraved bank-notes; to countersign, number, and register;  
1851, 287, § 6.  
1850, 221, § 6.  
See 1850, 51.  
1851, 72.

SECT. 115. The auditor of accounts printed in the best manner to guard notes in the similitude of bank-notes as are allowed by law and in such time deem necessary. Before such shall be numbered and registered in in the office of the auditor, and counteraction by some person by him appointed by the governor and subject to removal, on notice shall be given as the governor.

to destroy bank-notes returned;  
See 1850, 2.  
1851, 162.

SECT. 116. Any such bank may, at its circulating notes to the auditor, the same, cause them to be destroyed by the president and cashier of the bank shall be entered upon the books of the auditor and said president and cashier.

to give notes to bank upon receipt of public stock, &c. Part to be exempt from taxation.  
1851, 287, § 7.  
1852, 286, § 2.  
See 1850, 170.  
1850, 210.

SECT. 117. When such bank transacts above its par value nor above its currency issued by a city or town in this state, states, New York, or the United States to a stock of this state producing six fifty thousand dollars, and not exceed capital stock, such bank shall be entitled equal amount of circulating notes so stamped on their face, "secured by the stock of such bank shall be exempt from taxation. The capital stock not exceeding three-fourths of the value of the stock so transferred.

Stocks may be exchanged or surrendered.  
1851, 287, § 8.

SECT. 118. The circulating notes of such bank shall be secured in full by public stocks as provided in this chapter, and shall never be less in amount than the amount to which provisions the auditor may render and transfer to it its deposit change for other stocks of the kind so provided. An equal amount of circulating notes or bills shall be by the auditor immediately cancelled.

Securities to be stamped.

SECT. 119. All securities held by the bank of this chapter shall as soon as received by the president or cashier of such bank, be stamped with the following words, to wit:—

COMMONWEALTH OF

Deposited in the auditor's office by (fill in the blank) depositing the security) as security for its circulation, without the consent of the auditor and the treasurer.



And such securities, when withdrawn in conformity with the provisions of this chapter, shall be indorsed with the words, "Withdrawn by consent of the auditor"; which consent shall be signed by the auditor and countersigned by the treasurer.

SECT. 120. Such bank, after having executed and signed such circulating notes so as to make them notes payable on demand at its banking house, may loan and circulate them as money subject to the laws and usages of this state in regard to banking, and shall issue no other circulating notes.

Banks may circulate notes.  
1861, 267, § 10.

SECT. 121. If such bank after receiving such circulating notes refuses or delays payment in gold and silver money of any such note issued by it and presented for payment in its usual hours of business, it shall be liable to the penalty prescribed in section fifty-nine, and the holder making such demand may cause the same to be protested. The auditor on receiving and filing in his office such protest shall forthwith give notice in writing to the bank that issued such note; and if the bank neglects or refuses to redeem it in gold or silver money for ten days after such notice, he shall immediately, unless he is satisfied that there is a good and legal defence against the payment thereof, give notice by publication in two or more newspapers that all the circulating notes issued by such bank will be redeemed out of the trust funds in his hands for the purpose. He shall thereupon apply such trust funds to the payment, pro rata, of all the circulating notes issued by such bank, whether protested or not, and adopt such measures for the payment thereof as will in his opinion most effectually prevent loss to the holders.

Proceedings when payment of bills refused.  
1861, 267, § 11.

SECT. 122. The auditor shall not countersign circulating notes for any bank to an amount in the aggregate exceeding the public stocks deposited with him by such bank. If the auditor wilfully violates the provisions of this section he shall be punished by fine not less than five thousand dollars, or imprisonment not less than five years, or by both.

Penalty for countersigning excess of notes.  
1861, 267, § 12.  
See 1862, 26.  
1862, 26.

SECT. 123. The plates, dies, and materials, to be procured by the auditor for making such notes, shall remain in his custody and under his direction; and each bank shall pay such portion of the expense thereof as may seem to the auditor just and reasonable.

Plates, dies, &c., to be kept by auditor.

SECT. 124. No such bank shall pay from its counter any bills except its own and those of other banks of this state.

Expense of, by whom paid.  
1861, 267, § 13.  
What bills bank to pay out.  
1861, 267, § 12.

SECT. 125. The auditor shall make and deliver to every such bank powers of attorney to receive the interest and dividends at any time due on the public stock deposited by it; but he may revoke such powers of attorney when in his judgment the public safety requires it; and all money received by him as interest or dividends shall be held in trust for and on account of such bank.

Banks to receive the interest, &c., on public stock pledged;  
1861, 267, § 9.

SECT. 126. Every such bank shall, in addition to the returns required of other banks, specify and describe the stocks which it has deposited with the auditor.

to make returns of stocks deposited  
1861, 267, § 15.

SECT. 127. The secretary shall prepare a separate abstract of the returns of such banks. The annual meetings of the stockholders for the choice of directors shall be held in conformity thereto, agreeably to the provisions of section forty-three.

Abstracts of such returns.  
Time of annual meeting.  
1861, 267, § 16.

SECT. 128. The bank commissioners shall examine the certificates of stocks held by the auditor and the amount of circulating notes issued to any bank on account thereof, and if in their opinion such stocks have so depreciated in value as to make them unsafe for the security deposited, they shall require the bank to exchange such security or give additional security to their satisfaction.

Bank commissioners to examine stocks, &c.  
1861, 267, § 17.  
See 1863, 192, § 8.

SECT. 129. When a bank has redeemed and returned to the auditor at least ninety per cent. of the bank notes which it has received, and shall deposit in his name in such bank as he approves an amount of

Stock may be returned.  
1861, 267, § 18.  
See 1865, 163, § 5.  
1868, 210.  
1869, 149.













# INSURANCE COMPANIES -

**SECT. 13.** The first meeting of shall be called by a notice signed in the act of incorporation, setting of the meeting, which shall seven delivered to each member, or printed in some newspaper of an adjoining county in which the company is established.

**SECT. 14.** Every such company secretary of the commonwealth, or organization under the same, without or the same shall be void.

**SECT. 15.** All matters proposed such companies shall be specified in

**SECT. 16.** Such companies may business, not repugnant to their state, but no such company shall limitation, in its by-laws or policies, suit shall be brought against the commencing such suit to a less period, the right thereto accrues.

**SECT. 17.** The secretary and treasurer shall give bond in such sum as may be required for the discharge of their respective duties.

**SECT. 18.** Such companies shall specified in their charter; and where cities or towns, all signs, cards, papers or issued by them, shall specify the place they represent is located.

**SECT. 19.** Such companies shall law taxing insurance companies; and furnish to the legislature, or to a committee of commissioners, a statement of the secretary and sworn by them to knowledge and belief, and shall concerning the same.

**SECT. 20.** Investments of the company shall be made in its corporate name; and their risks, shall be kept and invested in assets belonging to each class.

**SECT. 21.** No member of a company shall be a mutual fire, or mutual life, insurance company, or investing its funds, shall borrow from others, or directly or indirectly from any company.

**SECT. 22.** Mortgages on real estate shall be liable to be attached and sold in the manner provided in sections seven, of chapter fifty-seven, in relation to the same. And the secretary shall perform the duties of a clerk.

**SECT. 23.** No company shall deal in goods, wares, merchandise, or other like property, unless it has been insured by such company, on which the same shall be insured.

**SECT. 24.** Every insurance company shall conduct the same in the proper manner, and not by various and different names. And no policy of insurance issued by any company shall be in the corporate name or title of the company, or issued for a term exceeding seven years.

































































## DICATIONS — CHARTERS.

asurer, who shall give notice thereof to the stockholder  
er neglects to pay his assessments for thirty days after  
e treasurer, the directors may order the treasurer after  
of the sale to sell such shares by public auction to the  
; and the same shall accordingly be transferred to the  
the shares of a stockholder do not sell for a sum sufficient  
assessments with interest and charges of sale, he shall be liable  
poration for any deficiency; if such shares sell for more,  
d to the surplus remaining; but no assessment shall be laid  
s to a greater amount than the sum at which they shall  
d by vote or agreement of the stockholders.

er or shareholder has paid nothing upon  
m the time when an assessment has been  
declared forfeited by the directors, the  
sponsible person who subscribes for the

e capital stock of such corporation shall  
l may be transferred by a conveyance  
treasurer in books to be kept in his office  
d by the directors in books to be kept  
appoint. When recorded in such other  
ys thereafter be also recorded in the books  
no conveyance of shares shall be valid  
in the grantors or their representatives  
ing the transfer a new certificate shall

may hold stock in a telegraph company  
ects two or more places on the line of the  
ing two hundred dollars for each mile

## CHARTERS.

a charter for a railroad corporation shall  
npanied with a map of the proposed route  
e scale; and with a profile of the route  
comparing with the horizontal scale  
or unless it is accompanied and supported  
ineer, founded on actual examination  
r evidence showing the character of the  
proposed to construct the road, the ge  
ie country through which it is proposed  
ie route, and an estimate of the probable

s presented to a committee of the legislature  
on for such a charter shall be placed before

be acted upon until notice of the pending  
ed according to law, which notice shall be  
with such certainty as to give reasonable  
therein that their rights may be affected  
, and that they may have an opportunity  
but the provisions of this section and  
ent the legislature from requiring survey

ll confine the road within the limits indicated  
the preceding section, shall specify the  
igh which the same may pass, and shall  
on which the road is authorized to be  
s the nature of the case will admit.

























































## REAL SOCIETIES

on to whom the  
award. A  
warded to the  
for any further  
om those for  
premium, and  
e than one s  
r shall affect,  
state board  
notion of Ag  
gricultural so  
d regulations  
etts Society.]  
on or before  
ags, signed by  
oard of agric  
money, spe  
society, the  
persons to v  
of committe  
arded by the  
all accompan  
state of agric  
portant or us  
shall be mark  
and statemen  
study, and a

ear to comply  
of the board  
he state the

ounty shall c  
apply for the  
ictures, a sur  
all offer such  
er as the stat

offer such prer  
oaks and ot  
o perpetuate

nich is not a  
the capital st

extend to a  
s than a coun

s may by the  
erection of t  
s to and about  
ons, and also  
; within whic  
nless in confor

tions, and af  
ixed, shall for

authorize a









## IELDS.

sold with  
of the sal  
r more i  
in num  
de the p

ommon p  
ed with  
lies; an  
e manne

roperty al  
ears then  
the time  
orporate  
ts, due  
s debts.  
division  
e money  
ts and a  
er lawfu

ces of la  
the prop  
e proprie  
fter prov  
of mana

more p  
to one of  
rs and ex  
eting.  
er in tl  
nants in  
een days

ording t  
; and wh  
ropriator

o time  
her offic  
until r  
and qua

ield driv  
et to th  
own.  
pasturing  
erest as  
ut in all  
nd as he  
dopting  
and is e  
ned in d  
his land  
neral fic







## POWERS AND DUTIES OF CORPORATIONS.

ty. The persons so named and their associate subscribers to the date of their act, shall be authorized to hold the same privileges granted until the corporation is organized. The first meeting of incorporated religious societies shall be held in the door or some other conspicuous part of their meeting place.

the first meeting of any corporation organized under the laws of this state, authorizing the formation of such corporation, may be set forth in the articles of association, or if they may

a majority of the associates and in the preceding section.

of the death, absence, or other legal disability of any member of the corporation, there is no person present at a legal meeting, any justice of the peace for the county in which the corporation is established may on a written application of the members issue a warrant to elect officers by giving such notice as he may think proper, and the members shall meet at the time and place so appointed, and the justice may in the same warrant require the members to be present at the meeting until a clerk shall be elected, and any member who is present legally authorized to propose and second the election of officers so assembled may elect officers and transact any other business as may by law be authorized.

by their by-laws, where no other law shall be made in the manner of calling and conducting the business of the members that shall constitute a quorum; no by-law shall entitle the members to one or more proxies; the mode of selling shares and the tenure of office of the several officers shall be subject to the penalties to such by-laws, not exceeding the sum of five dollars for each offence; but no by-law shall be made in violation of the provisions of this charter, or the laws of the state; and no by-law shall convey lands to which it

g a capital stock divided into s  
not issue any shares for a less a  
share than the par value of the

cashier of every corporation shall  
re with the number of shares own  
n written application by any stockt

If such officer refuses so to e  
lars for each offence.

nistrator, guardian, or trustee, shall hands at all meetings of the order.

fers of stock in companies incorpo-  
te, shall be made and kept with  
pany whose duty it is to record  
appointment be a resident within  
be a resident the office shall be

ock as collateral security, the d  
nded to secure shall be substantial  
ent of transfer. A certificate of  
such collateral security shall expr  
holden; and the name of the p  
e shall be responsible as a stockh  
nier, or other officer who has the













































































## STATE REFORM SCHOOL.

cause the boys under their charge to be instructed in moral, religious, and in such branches of their age and capacity; and in mechanical, manufacturing, agricultural, and in such other avocations of these, as is best suited to their age and capacity; and in such other avocations as may be deemed expedient to secure the reformation, amendment, and improvement of the same.

bind out boys committed to the institution until they become twenty-one years of age. The trustees, and master or mistress, respectively have the rights and privileges set forth in chapter one hundred and thirty-two, as if such binding or apprenticing were in force. In binding out boys, they shall have regard to the religious and moral character of those to whom they are bound, so that they may secure to the boys the benefit of wholesome instruction, and the sure means of acquiring industry and knowledge, and thus the opportunity of becoming moral, useful, and happy citizens.

One or more of the trustees shall visit the school at least once in two weeks, at which time the boys shall be examined in their room and workshop, and the register shall be kept of these visits in the books of the superintendent. Once in three months the school in all its departments shall be examined by a majority of the trustees, and a report shall be made to the board on or before the fifteenth day of October. An abstract of these quarterly reports shall be presented to the legislature a full report by the superintendent, and the names of the boys and their salaries, and in a tabular form as provided in section eleven of chapter five, the value of the property shall be laid before the governor and council, and the legislature. The treasurer shall also keep a correct and accurate detailed account of the receipts and expenditures of the year terminating on the last day of the preceding year.

### *Superintendent.*

The superintendent, with such subordinate assistants as he may appoint, shall have the charge and custody of the institution, and shall be a constant resident at the institution, and shall use his best endeavors to provide for the health and welfare of the boys while preserving their health and promoting the progress of moral, religious, and industrial education, and the success and improvement in their studies.

On entering upon his duties the superintendent shall give a satisfactory report to the governor. He shall receive a salary of five hundred dollars, conditioned that he shall give an account for all money received by him. He shall be filed in the office of the auditor. He shall have charge of all the property and effects thereof. He shall keep in his office a correct account of receipts and expenditures, and shall send a statement of the income and expenses of the institution to the treasurer in such manner as he may direct. All money received by him. He shall see that the school shall at all times be in a state of order, and who shall at least once in every























































so sold or is so intended for sale, shall be liable to the penalty prescribed in the preceding section; and the corporation shall also be liable to pay a fine of fifty dollars, to be recovered by indictment or complaint in any county in which such liquor has been received or into which it is carried.]

Penalty for bringing liquor into the state, &c.; 1855, 215, § 20.

SECT. 37. (R.) [Whoever brings into this state, or conveys from place to place within the same, any spirituous or intoxicating liquor, with intent to sell the same himself or to have it sold by another, or having reasonable cause to believe that the same is intended to be sold in violation of this chapter, shall be punished for the first and each subsequent offence in the manner provided in section thirty, for any person illegally selling spirituous or intoxicating liquor.]

for selling to certain persons after notice in writing, &c.; 1855, 215, § 21.

SECT. 38. (R.) [The husband, wife, parent, child, guardian, or employer, of any person who has the habit of drinking spirituous or intoxicating liquor to excess, may give notice in writing signed by him or her to any person not to deliver spirituous or intoxicating liquor to the person who has such habit. If the person so notified at any time within twelve months after such notice delivers any such liquor to the person who has such habit, the person giving the notice may in an action of tort recover of the person notified any sum not less than twenty-one nor more than five hundred dollars, as may be assessed by the jury as damages. A married woman may bring such action in her own name notwithstanding her coverture, and all damages recovered by her shall go to her separate use. In case of the death of either party the action and right of action given by this section shall survive to or against his executor or administrator.]

Persons unlawfully furnishing liquor liable for damages done by persons intoxicated thereby. 1855, 215, § 22.

SECT. 39. (R.) [If a person in a state of intoxication commits an assault and battery or injures any property, whoever furnished him with any part of the spirituous liquor which occasioned his intoxication, if the same was furnished in violation of this chapter, shall be liable to the same action by the party injured as the person intoxicated would be liable to; and the party injured, or his legal representatives, may bring either a joint action against the person intoxicated and the person who furnished the liquor, or a separate action against either.]

Persons found intoxicated in certain cases may be arrested without warrant, &c.; 1855, 215, § 23.

1876 c. 17

SECT. 40. (R.) [If a person is found in a state of intoxication in a public place, or is found in any place in a state of intoxication committing a breach of the peace or disturbing others by noise, any sheriff, deputy-sheriff, constable, watchman, or police officer shall without a warrant take him into custody, and detain him in some proper place until in the opinion of such officer he is so far recovered from his intoxication as to render it proper to carry him before a court of justice. The officer shall then take him before some justice of the peace or police court in the city or town where he has been found, and shall make a complaint against him for the crime of drunkenness.]

to be discharged if they disclose person of whom they procured liquor, &c.; 1855, 215, § 23.

SECT. 41. (R.) [If such person then discloses fully the name of the person of whom, and the time, place, and manner in which, the liquor producing his intoxication was procured, and all circumstances attending it, the justice or court shall administer to him the oath provided for witnesses, and interrogate him in the presence of the officer; and if it appears to the officer and magistrate that either of the offences specified in sections thirty or thirty-one has been committed, the officer shall file his complaint for the commission of such offence, before said justice or court, against the persons who appear to have been guilty thereof, and the person so disclosing shall be named as one of the witnesses. The officer shall thereupon discontinue his prosecution for drunkenness, and the person arrested shall be discharged, and shall not be liable to be prosecuted again for the same offence.]

Search warrants may be issued upon complaint,

SECT. 42. (R.) [If two persons, of full age and competent to testify, make complaint under oath or affirmation, before a justice of the peace or

























































hundred and sixty-three, widow  
 dower, or commence any action  
 thereof, unless the same is made  
 from the decease of the husband  
 band's decease the widow was o  
 twenty-one years of age, insan  
 claim or commence such action or proceeding at any time  
 years after such disability ceases.

SECT. 7. When a widow is entitled to dower  
 husband died seised, she may continue to occupy  
 children or other heirs of the deceased, or to receive  
 the rents, issues, or profits, thereof, so long as  
 thereto, without having her dower assigned; and  
 any of them deem it proper to hold or occupy  
 the widow may claim her dower and shall have  
 her according to law.

SECT. 8. A married woman may bar her right  
 conveyed by her husband, or by operation of  
 deed conveying the same, and therein releasing  
 by releasing the same by a subsequent deed  
 jointly with her husband. And her dower may  
 manner provided in chapter one hundred and c

SECT. 9. A woman may also be barred of her  
 of her husband, by a jointure settled on her at  
 marriage: *provided*, such jointure consist of a  
 for the life of the wife at least, to take effect  
 immediately on the death of the husband; her  
 being expressed, if she is of full age, by her husband  
 conveyance by which it is settled, and if she  
 ing with her father or guardian in such conveyance

SECT. 10. Any pecuniary provision made for  
 wife, and in lieu of dower, shall, if assented to  
 ceding section, bar her right of dower in all the

SECT. 11. If such jointure or pecuniary pro  
 made before the marriage and without the assent  
 or if it is made after marriage, it shall bar her  
 months after the death of her husband she may  
 such provision and be endowed of the lands  
 husband dies while absent from his wife, she  
 after notice of his death within which to make  
 shall in all cases have six months for that pu  
 existence of such jointure or provision.

SECT. 12. A widow shall not be endowed of  
 husband dies seised, nor of wild lands conveyed  
 should be afterwards cleared; but this shall not  
 in any wood lot or other land used with the  
 although such wood lot or other land has neve

SECT. 13. If a woman is lawfully evicted  
 as dower or settled upon her as jointure, or is  
 made for her by will or otherwise in lieu of do  
 anew in like manner as if such assignment, joint  
 had not been made.

SECT. 14. If a tenant in dower commits  
 premises held in dower, she shall forfeit the pr  
 amount of damage done to the premises, to be re  
 waste by the person having the next immediate

SECT. 15. When a man dies seised of lands  
 ments, or of any right or interest therein in fee  
 fully devised the same, and leaving a widow, but















re  
l,  
re  
r  
p  
v  
in  
t  
h  
b  
re  
re  
q  
co  
id  
v  
li  
ep  
e  
r  
d  
nd  
r,  
s  
d  
t  
s  
d  
o  
py  
li  
t  
er  
el,  
sa  
ro  
al  
r  
stl  
st  
c  
le  
r  
h  
er  
un  
in  
pe  
a



## WILLS.

of his estate, both real and personal, that they would be as if he had died intestate; unless they shall have been provided for by the testator in his lifetime, or unless it appears that the devise was intentional, and not occasioned by accident or mistake.

4 Allen, 512. 11 Allen, 47. 97 Mass. 439. 101 Mass. 125. 106 Mass.

When a child of a testator, born after his father's death, is provided for by a provision made for him by his father, in his will or other instrument, he shall take the same share of his father's estate, both real and personal, as if he were living and titled to if his father had died intestate. If a child is assigned to a posthumous child, and is omitted in the will of his parent, in the last three sections, the same shall be taken as if he were a legatee, in proportion to the value of the estate under the will; unless in consequence of some other provision in the will, the devisees and legatees are found to have intended the intention of the testator as expressed by his will.

If a devise of real or personal estate is made to a person, and the devisee dies before he takes possession, and survives the testator, such issue shall take the same share in the same manner as the devisee would have taken if he had survived the testator; unless a different disposition is made by the will. 9 Met. 148. 14 Gray, 546. 21 Allen, 86. 97 Mass. 439. 101 Mass. 80. 102 Mass. 125. If a devise of real or personal estate, that is devised, is subject to the payment of the debts of the testator, the devisees and legatees shall contribute their respective portions from whom the estate is taken, so that the debts be paid in full, and the devisees and legatees according to their shares; except as provided in the foregoing sections.

If the testator, by making a specific devise, has exempted any devisee or legatee from liability for the payment of the debts, or if he has prescribed or required any apportionment of his debts different from that directed by law, the estate shall be appropriated according to the intention expressed in the will.

The provisions in the two preceding sections shall not affect the liability of the whole estate of the testator for the payment of his debts; but the provisions in these sections shall apply to the division of the assets, as between those who are entitled to share in the estate.

If the estate of a testator descends to a child, or to any person, in consequence of his having no provision made for him, or if he is provided to a posthumous child, such estate shall, in the last three preceding sections, be considered as if it were a child or other descendant; and he shall take the same share as the devisees and legatees, and entitled to the same, as before provided.

Every person liable to contribute towards the payment of the debts of a testator, in consequence of the provisions of the four preceding sections, shall be liable to pay his just proportion thereof, and shall be liable for the loss occasioned by such death, in proportion to the value of the property received by him, or his estate, at the time of the testator's death; and if any person so liable shall die before he has paid his proportion of such debt, his executors or administrators shall, hereafter, in like manner as if it had been paid by him, be liable for which he would have been liable if he had lived.



## **F EXECUTORS, &c.**

### **Settlements of Executors and**

ing to Estates, Trusts, and Guar

---

## **TER 93.**

### **PROCEEDINGS ON THE PROB. ILLS.**

#### **Section**

6. Executor renouncing, or not nam  
ministration to be granted.
7. Administration during minority  
tor.
8. Bond of administrator with will an
9. Executor of executor, &c.

been duly proved and allow  
estamentary thereon to the  
npetent, and if he accepts t  
same; otherwise the proba  
on on the estate as hereina

entering upon the executio  
nt surety or sureties in suc  
all order, payable to said ju  
stantially as follows, (except  
one:) —

bate court, within three months, a  
s, chattels, rights, and credits, of t  
which shall have come to his pos

rw, and the will of the testator, all  
eds of all his real estate that may  
come to the possession of the exec

nd true account of his administrat  
ired by said court.

appointed executors, none sh  
ho give bond as before presc  
dge, that the bond prescribe  
for the protection of any p  
ut an executor who is residu  
give bond in a sum and with  
h condition to pay all debts  
ns as may be allowed by the  
w or minor children; and  
ired to return an inventory.  
id provided for in the prece  
on the real estate of the tes  
n such part as shall have l  
n good faith and for a valu  
ld may be taken on executio  
a like manner as if a bond l

exempt from giving a surety





#### 4.] ADMINISTRATION OF INTESTATE ESTATES.

##### ADMINISTRATION.

SECTION 1. Administration of the estate of an intestate to some one or more of the persons hereinafter mentioned shall be entitled thereto as follows:—

1. The next of kin, or both, as the probate court may not either take or renounce the administration within the county, be cited by the court.

2. If persons so entitled are incompetent, or have a charge of the trust, or if they neglect to do so within thirty days after the death of the intestate, the probate court shall commit the administration to the principal creditors, if there is any charge on the trust:—

3. If no such creditor, administration shall be granted to the court shall deem fit: *provided*, if the deceased was a married woman, administration shall be granted to her husband, if he is living, or to the trust, unless by force of a marriage contract or as made some testamentary disposition or other provision, which renders it necessary to appoint another person to administer her estate; and if there is no such person, and leaves no widow, husband, or next of kin, shall be granted to a public administrator.

4. The public administrator, before entering on the execution of his duties, shall give with sufficient sureties in such sum as the court may order, payable to said judge and clerk, substantially as follows, (except as provided in section 2:) —

5. To receive into the probate court, within three months, all the goods, chattels, rights, and credits which come to his possession or knowledge: and to deliver according to law all the goods, chattels, rights, and credits of all his real estate that may be sold, or at any time come to the possession of the estate.

6. To render with a true account of his administration within the time required by the probate court:

7. The balance remaining in his hands, upon the settlement of the probate court shall direct:

8. The proceeds of administration into the probate court, or to be duly proved and allowed.

9. Administration shall not be originally granted to any person from the death of the testator or intestate, unless authorized by law.

10. If administration has not been taken on the estate within twenty years after his death, no real or personal accrues to said estate, and the knowledge of any person interested in the estate may be granted on such property as accrues to it so accrues or becomes known to him, or to no other property.

11. Letters of administration as of a right to an intestate deceased is duly proved and allowed, shall not be revoked; and the executor, or administrator, may demand, collect, and sue for, all debts due to him, or of the deceased, remaining unpaid.











by three suitable disinterested persons appointed or any disinterested justice of the peace may of any part of the estate which may be in his hands shall be sworn to the faithful discharge of their

how appointed  
and sworn.  
R. S. 65, § 2.

raisers are appointed by a justice of the peace, to them, in substance as follows:—

Justice's order  
to appraisers.  
R. S. 65, § 2.

in said county. You are hereby appointed to appraise, of late of deceased, which may have performed that service, you will deliver this order, as thereof, to (executor or administrator, as deceased, that he may return the same to the probate court. Given under my hand, this day of in Justice of the Peace.

#### ICES TO WIDOWS AND CHILDREN.

of apparel and ornament of the widow and deceased person, shall belong to them respectively. of the personal estate of a person deceased as regard to all the circumstances of the case, as to his widow, for herself and family under her widow, to his minor children, not exceeding fifty d also such provisions and other articles as are able sustenance of his family, and the use of his therein, for forty days after his death, shall not be payment of debts, legacies, or charges of ad- 310. 5 Allen, 144. 12 Allen, 120, 307. See 1871, 97.

Apparel, &c., of  
widows, &c.  
1888, 145, § 1.  
Widow's allow-  
ance.  
R. S. 60, § 18.  
1888, 145, § 2.  
1842, 15.  
10 Pick. 431.  
10 Met. 170.  
6 Cush. 20.  
1 Gray, 531.  
8 Gray, 521.  
5 Gray, 24.  
See Ch. 90, § 18.

116 M. 447  
117 M. 27

#### SECTION OF THE EFFECTS, &c.

plaint made to the probate court by an executor, trustee, creditor, or other person, interested in the estate, against any one suspected of having fraudulently, embezzled, or conveyed away, any money, estate, real or personal, of the deceased, the court person, though he is executor or administrator, sworn on oath, upon the matter of the complaint. If he refuses to appear and submit to examination, or to answer interrogatories as are lawfully propounded to him, he shall be committed to the jail, there to remain in close custody until he appears before the court. The interrogatories and answers shall be filed in the pro-

Persons sus-  
pected of con-  
cealing effects  
may be exam-  
ined on oath.  
1867, 71, § 2.  
7 Greenl. 467.  
4 Mass. 222.  
7 Pick. 14.  
8 Pick. 454.  
12 Met. 320.  
4 Cush. 48.  
20 Mass. 470.

goods and chattels, rights and credits, in the hands of the executor or administrator, are not sufficient to pay the debts and charges of administration, his real estate, or as much of his personal estate as may be necessary, shall be sold for that purpose by the court, or upon obtaining a license therefor in the manner prescribed in the next section.

When personal  
estate insuffi-  
cient, real estate  
may be sold, &c.  
R. S. 65, § 8.  
7 Met. 454.  
7 Gray, 169.  
16 Gray, 268.  
4 Allen, 351.  
See 1864, 312.

Effects of real estate so sold shall be considered as assets of the executor or administrator in like manner as if they had been part of the goods and chattels of the deceased, and the sureties in his administration shall be accountable and chargeable therefor.

Proceeds of sale  
to be assets,  
&c.  
R. S. 65, § 9.

Mortgagee of real estate, or an assignee of such mortgage, having foreclosed the right of redemption, the debt secured thereby shall be considered as a debt in the hands of his executor or administrator, and he shall be accountable and chargeable therefor; and if the mortgagee

Mortgage of  
real estate to be  
considered per-  
sonal assets.  
R. S. 65, § 11.  
16 Mass. 13.  
10 Met. 337.

F DEBTS, &c.,

in his lifetime  
or or administ  
entry or by ac  
living.

the redemptio  
eived by the e  
id discharge th  
administrator  
ceased, shall b  
rsons who wo  
edeemed.

an executor or  
ceased, and le  
uch real estat  
o the money, i  
te so taken on  
ands; and if re  
dministrator, v  
estate held by  
ecution by hin  
time before the  
personal estat  
estate held by  
ecution by hir  
l for the paym  
ie same manne  
taining a licen  
3 and two.

d so held by  
, is not redeen  
tributed to the  
l been part of  
ution the esta  
ause partition  
t had been re

---

## CHAP'

### IE PAYMENT OF

of taking administ

of,  
ident, &c., and whe  
ed.

creditors;  
received after tw

defect in form, ne  
d.  
of action accrues afte

ngs in such case.  
ion liable to actions fr

ntment;  
case new assets are n

., not barred.



executor and administrator, within three months after giving bond for the discharge of his trust, shall cause notice of his appointment to be posted in two or more public places in the city or county in which the deceased last dwelt; or he may be required by the court to give notice by publishing in some newspaper, or in any other manner as the court, taking into consideration the business of the estate and the circumstances of his estate, shall direct.

2. An affidavit of the executor or administrator, or of the person employed by him to give such notice, being made before the justice of the peace, and filed and recorded with a copy of the same in the probate office, within one year after giving bond as aforesaid, at any time afterwards by permission of the court upon petition of the executor or administrator and satisfactory evidence furnished that notice was given as ordered, shall be admitted as evidence of the place, and manner, in which the notice was given.

3. If, by accident or mistake, notice is not given, or the evidence thereof fails to be perpetuated as provided in the preceding section, the probate court may, on the petition of the executor or administrator, order such notice to be given at any time afterwards; in which case the periods of time which are herein limited for the commencement of actions against executors and administrators and for other purposes which begin to run from the date of the administration bond, shall run respectively from the time of passing such order.

4. No order under the preceding section shall exempt the executor or administrator, and his sureties, from any liability for damages incurred by reason of the omission to give notice within three months.

5. No executor or administrator, after having given notice of his appointment as provided in section one, shall be held to answer the claim of any creditor of the deceased, unless it is commenced within two years from the time of his giving bond as aforesaid, except in the cases hereinafter mentioned.

13 Gray, 364. 5 Allen, 27. 12 Allen, 280. 103 Mass. 285. 105 Mass. 247.  
2 Allen, 445, 495. 8 Allen, 259. 13 Allen, 221. 104 Mass. 277. 688.  
3 Allen, 122. 11 Allen, 101. 102 Mass. 268. 106 Mass. 229. 107 Mass. 285.

6. When assets come to the hands of an executor or administrator after the expiration of two years, he shall account for and apply them in like manner as if they had been received within that time, and shall be liable to an action at law, or to any suit or process in the court, on account of such new assets, by or for the benefit of the creditor, in like manner as if the assets had been received within two years if such action or proceeding is commenced within one year after he has notice of the receipt of such new assets, and after the same is actually received.

7. No action commenced against an executor or administrator within the two years limited in this chapter, shall be a bar to the recovery of the debt or return by an unavoidable accident; or if the action is abated or defeated in consequence of a defect in the pleadings, or of a mistake in the form of the proceeding; or if the plaintiff, the judgment is arrested; or, if a writ of error is reversed on a writ of error, the plaintiff may bring a new action for the same cause at any time within one year after the determination of the original suit, or the judgment therein.

8. If the right of the deceased, whose right of action does not accrue after the giving of the administration bond, is transferred to the probate court at any time before the judgment is entered; and if, on examination thereof, it appears that the same is justly due from the estate, he shall order the administrator to retain in his hands sufficient to satisfy the claim, and if no person interested in the estate offers to give bond

Public notice  
to be given of ta-  
king administra-  
tion,  
R. S. 66, § 1.  
12 Allen, 280.  
97 Mass. 401.

perpetuation  
evidence of:  
R. S. 66, § 2.  
1855, 123.  
13 Gray, 336.  
16 Gray, 363.  
4 Allen, 380.

1876 c.

when omitted  
by accident, &  
and when evi-  
dence is not p-  
petuated.  
R. S. 66, § 25.  
16 Gray, 338.

Liability for d-  
amages.  
R. S. 66, § 28.  
6 Allen, 494.

Limitation of  
actions by cre-  
ditors;  
R. S. 66, § 3.  
1852, 294, § 1.  
6 Cush. 285.  
2 Gray, 331.

108 Mass. 4.  
110 Mass. -

when assets  
received after  
years.  
R. S. 66, § 4.  
1852, 294, § 1.  
3 Pick. 386.  
8 Allen, 76.  
9 Allen, 385.  
103 Mass. 247.  
117 Mass. 2.

When action  
from defect in  
form, new act  
may be com-  
menced.  
1855, 157, § 1.  
104 Mass. 688.

Proceedings  
when right of  
action accrues  
after two years.  
R. S. 66, § 5.  
104 Mass. 688.

to the alleged creditor with sufficient surety or sureties for the payment of the demand in case the same is proved to be due, the court may order such bond to be taken, instead of requiring assets to be retained as aforesaid.

Further proceedings in such case.  
R. S. 66, § 6.  
8 Allen, 275.  
See 1871, 238.

SECT. 9. The decision of the probate court upon the claim of such creditor shall not be conclusive against the executor or administrator, or other person interested to oppose the allowance thereof; and they shall not be compelled to pay the same, unless it is proved to be due in an action commenced by the claimant within one year after the same becomes payable.

Same subject.  
R. S. 66, § 7.  
104 Mass. 577.

SECT. 10. The action shall be brought against the executor or administrator, if he has been required to retain assets therefor; otherwise, upon the bond given by the persons interested in the estate.

Same subject.  
R. S. 66, § 8.  
1852, 312.

SECT. 11. If the action is brought on the bond, the plaintiff shall set forth his original cause of action against the deceased, in like manner as would be required in a declaration for the same demand against executors or administrators, and may allege the non-payment thereof as a breach of the condition of the bond; and the defendant may answer any matter of defence that would be available in law against the demand if prosecuted in the usual manner against the executor or administrator.

Administrator *de bonis non* liable to actions for two years;  
R. S. 66,  
§§ 20, 21, 22.  
1852, 294, § 2.  
6 Allen, 372.  
7 Allen, 64, 209.  
to give notice of appointment;  
R. S. 66, § 23.  
7 Allen, 209.

SECT. 12. When an executor or administrator dies, resigns, or is removed, without having fully administered the estate of the deceased, and a new administrator is appointed, such new administrator shall be liable to the actions of creditors for two years after he has given bond for the discharge of his trust, unless the same were barred prior to the termination of the previous administration.

SECT. 13. The new administrator shall give notice of his appointment in the manner prescribed in this chapter with respect to an original administrator; and if he fails so to do he shall have no benefit of the limitations herein provided.

to be further liable, in case new assets are received.  
R. S. 66, § 24.  
6 Allen, 372.

SECT. 14. When assets come to the hands of such new administrator after the time above limited for the commencement of actions against him, he shall account for the same, and shall be liable to an action at law, and to any suit or process in the probate court, on account of such new assets, by or in behalf of any creditor, in like manner as is provided in this chapter with respect to an original executor or administrator.

Action against heirs, &c., not barred.  
R. S. 66, § 9.

SECT. 15. Nothing herein contained shall prevent or bar the action of any creditor against the heirs, next of kin, devisees, or legatees, of the deceased, as provided in chapter one hundred and one.

No action against executor, &c., within one year, except, &c.  
R. S. 66, § 10.  
1 Met. 333.  
4 Gray, 514.  
7 Allen, 64.  
13 Allen, 224.

SECT. 16. No executor or administrator shall be held to answer to the suit of a creditor of the deceased, if commenced within one year after his giving bond for the discharge of his trust, unless it is for the recovery of a demand that would not be affected by the insolvency of the estate, or unless it is brought after the estate has been represented insolvent, for the purpose of ascertaining a contested claim.

Executors, &c., not liable for deficiency of assets, in case, &c.:  
R. S. 66, § 11.  
7 Gray, 169.  
7 Allen, 64.  
9 Allen, 149.

SECT. 17. If an executor or administrator who has given notice of his appointment as prescribed in this chapter, does not within one year thereafter have notice of demands against the estate of the deceased which will authorize him to represent it insolvent, he may after the expiration of said year proceed to pay the debts due from the estate; and he shall not be personally liable to any creditor in consequence of any such payments made before notice of his demand.

on proving such payments, to be discharged;  
R. S. 66, § 12.  
1 Met. 333.  
9 Met. 180.  
11 Met. 238.

SECT. 18. If an executor or administrator pays away in manner aforesaid the whole of the estate and effects of the deceased, before notice of the demand of any other creditor, he shall not be required in consequence of such notice to represent the estate insolvent, but in an action against him he shall be discharged upon proving such payments.

may represent

SECT. 19. If an executor or administrator pays away in manner

so much of the estate and effects of the deceased that the residue is insufficient to satisfy a demand of which he afterwards has shall be liable to pay on such last mentioned demand only so much as may then remain. If there are two or more such demands which together exceed the amount of assets remaining in his hands, he may represent the estate insolvent, and shall divide and pay the residue which remains in his hands among such creditors as prove their claims before the commission of insolvency, pursuant to such decree as the court shall make in that behalf; but the creditors of the estate who have been previously paid shall not be liable to refund the amount received by them.

Where the executor or administrator has obtained a decree of the court, that the whole estate and effects which have been in his hands of the executor or administrator have been applied to the payment of the charges of administration, the allowance to the executor of the deceased, and the charges of his last illness, or any other debts or claims entitled by law to a preference over the common creditors of the deceased, such settlement shall be a bar to any action brought against the executor or administrator who is not entitled to such preference, although the estate has not been represented insolvent.

The executor or administrator, within two years after the discharge of his trust, is required by a legatee to give security for the payment, in whole or in part of his legacy or bequest. The probate court may require that the legatee or executor give bond to the executor or administrator, with sureties approved by the judge, conditioned to refund the amount paid, or as much thereof as may be necessary to satisfy the claim that may be afterwards recovered against the estate, and to indemnify the executor or administrator against any claim made on account of such payment.

A legatee may recover his legacy in an action at common law; and a judgment contained in this chapter shall bar an action against an executor, or an administrator with the will annexed, for the recovery of any legacy, annuity, or bequest.

Where a last will and testament, or an instrument in writing, gives an annuity, or the use, rent, income, or interest, of any real or personal estate, or the income of any fund is given to, or for the use of, a person for life, or until the happening of a contingency, the legatee shall be entitled to demand, receive, have, and enjoy the same after the decease of the testator, unless it is provided in such will or instrument; or unless the same is subject to the payment of debts and other allowances having legal priority in the estate.

Where a person is entitled to such annuity, rent, interest, or income, and a contingent event happens at any intermediate time, the annuity for a year from the time when the whole of the annuity for the preceding year has become due, such annuity, or interest, for the then current year, shall be apportioned, and the legatee shall be entitled to receive a proportional part thereof, unless otherwise provided in such will or instrument; and the legatee shall be entitled to sue for the recovery of such annuity at the expiration of one year after he has assumed the administration of the estate.

Where the executor or administrator unreasonably delays in paying the debts and effects of the deceased, or selling the real estate, or in obtaining a license therefor, or in distributing the residue which he has in his hands; and in consequence of such delay the estate of the deceased is taken on execution by any

estate insolvent.  
R. S. 66, § 18.

If assets are exhausted in paying preferred debts, action against executor barred.  
R. S. 66, § 14.  
1842, 15.  
9 Met. 130.  
4 Gray, 514.  
7 Gray, 129.

110 m. 54

When executor, &c., may demand security from legatee or next of kin, to refund.  
R. S. 66, § 15.  
7 Allen, 64.  
101 Mass. 47.

Legatee may sue.  
R. S. 66, § 16.  
14 Mass. 423.  
11 Pick. 508.  
5 Met. 249.  
5 Gray, 87.  
7 Allen, 64.  
8 Allen, 63.  
106 Mass. 586.  
Annuity given by will, when payable.  
1848, 310, § 1.  
98 Mass. 462.  
102 Mass. 55.  
108 Mass. 299.  
351.

110 m. 225

Apportionment of annuity in certain cases.  
1848, 310, § 2.  
9 Allen, 248.

Executors, &c., liable, in case of unnecessary delay, &c.  
R. S. 66, § 17.







## STATUTES OF DECEASED PERSONS.

give notice of the claims of creditors, and shall give notice to all creditors at least seven days before each meeting, and also such other notice as may be required; and the executor or administrator at the first meeting, furnish to the commissioners a list of all known creditors.

At the appointment of the commissioners, the creditors are to present and prove their claims; and the commissioners may, at any further time for this purpose, on application, issue a subpoena, as shall be directed by the court, for the production of the time for the proof of claims, and for the return to the probate court.

If, after the commission any person is liable for any other contingent claim agreed to be paid as a debt under the commission, in ordering a dividend, leave in hand, or a sum sufficient to pay to such person, the commissioners shall be paid to

the debt becomes absolute within the time of the administration bond, it may be allowed by the executor or administrator before the commissioners already appointed, or by the judge, in like manner as if by the commissioners.

In case of such claim, the creditor shall be paid equal to what has been paid to the other creditors, or may be paid without disturbing the others, if the claim is not finally established, or if the claim is established, the assets in the hands of the executor or administrator shall be divided among the creditors in proportion to their debts.

If a claim is disallowed in whole or in part by the commissioners, the creditor or administrator who is dissatisfied with the decision of the commissioners may appeal from the same to the court, to be determined at common law in the county of Suffolk, if the demand is for less than one hundred dollars; and if the demand is for more than one hundred dollars, the appeal shall be directed to the superior court; and the appeal shall be determined in like manner as if an appeal by a creditor against the executor or administrator.

The appeal shall be claimed and notice thereof given to the executor or administrator, at least seven days after the return of the commissioners; and the appeal shall be heard within said thirty days. The appeal shall be heard at the next term of the court, to be held next after the expiration of the said thirty days.

The court at which the appeal is heard shall hear the case on a statement in writing of his claim, and shall hear all the material facts which are in issue in the same cause of action; and shall hear the case on the pleadings, trial, and decision, as if the case were on at law prosecuted in the usual manner; and shall award against the executor or administrator, or to the claimant, the final judgment of the court, and of debts allowed by the commissioners, and conform thereto.











See 1864, 168.  
1868, 287.  
1869, 381.  
1871, 322, 329.

Property held in trust by minors, &c., may be sold and conveyed in certain cases.

1846, 64.  
1859, 371, § 1.  
1865, 194, § 2.  
1866, 38, § 2.  
10 Gray, 17.

See 1864, 168.  
1868, 287.  
1869, 381.  
1871, 322, 329.  
1872, 370.

1874, 346

Power, &c., of S. J. C. as to sale, &c., of trust estates.

1846, 242.  
1853, 371, § 1.  
1865, 194, § 2.  
1866, 38, § 2.  
12 Allen, 341.  
14 Allen, 24.

Probate courts may terminate trusts created by persons deceased for benefit of creditors.

1860, 241, § 1.

Preceding section not to apply in certain cases.

1860, 241, § 3.

Certain trusts to be in writing;  
R. S. 59, § 30.  
4 Met. 537.  
10 Cush. 471.  
7 Gray, 369.  
10 Allen, 15.  
11 Allen, 15, 542.  
97 Mass. 87.  
102 Mass. 37.  
not to affect purchasers without notice.  
R. S. 59, § 31.  
Recording declaration of trust equivalent to notice.

personal estate or effects held by him in trust, and invest the proceeds and any other trust money in his hands, in real estate or in any other manner most for the interest of all concerned therein; and said courts may from time to time give such further directions as the case may require for managing, investing, and disposing of, the trust fund, subject to the provisions of the will.

SECT. 15. When a person seised or possessed of an estate, real or personal, or any interest therein, upon a trust, express or implied, is under the age of twenty-one years, insane, *feme covert*, or out of the commonwealth, or not amenable to the process of any court therein having equity powers, and in the opinion of the supreme judicial court it is fit that a sale be made of such estate, or of any interest therein, or that a conveyance be made thereof, in order to carry into effect the objects of the trusts; the court may by decree direct such sale or conveyance, and appoint some suitable person in the place of the trustee to sell or convey the same in such manner as it may require. If a person so seised or possessed of an estate, or entitled thereto upon a trust, is within the jurisdiction of the court, he or his guardian may be ordered to make such conveyances as the court may deem proper.

SECT. 16. The supreme judicial court, when a sale and conveyance of any trust estate have become necessary or expedient, upon a suit in equity brought by a party interested therein, may decree such sale and conveyance, and the investment, reinvestment, and application, of the proceeds thereof, upon such security and in such manner as shall best effect the objects of the trust, and be most safe and beneficial for all interested therein.

SECT. 17. When it appears upon petition or otherwise to the probate court of the county where letters testamentary or of administration have been granted on the estate of a person deceased, that such person in his lifetime made a conveyance of real estate in this state in trust for the benefit of his creditors, and the trustee certifies that all the debts secured thereby (due to other persons than himself) have been paid, or otherwise adjusted to the satisfaction of the creditors so far as known, and that he is desirous to settle his trust account and terminate the trust, the court shall appoint a time and place for hearing all persons interested therein; notice of which shall be given by advertisement in some newspaper printed in the county or otherwise as the court may order. Upon such hearing the court may terminate the trust so far as the creditors and persons claiming under them are concerned, and discharge such real estate therefrom; and may settle the trust account, and make any further order as to the disposition, distribution, or partition, of the remaining trust estate, not inconsistent with the provisions of the original instrument creating the trust.

SECT. 18. The preceding section shall not apply to any case where the instrument creating the trust does not bear date more than six years previous to the time appointed for the hearing. Nor shall it affect the operation of the insolvent laws of this state.

SECT. 19. No trust concerning lands, except such as may arise or result by implication of law, shall be created or declared, unless by an instrument in writing signed by the party creating or declaring the same, or his attorney.

SECT. 20. No such trust, whether implied by law or created or declared by the parties, shall defeat the title of a purchaser for a valuable consideration and without notice of the trust, nor prevent a creditor who has no notice of the trust from attaching the premises or taking them on execution, in like manner as if no such trust had existed.

SECT. 21. When a trust is created or declared by any such instrument in writing, the recording thereof in the registry of deeds for the county or district where the lands lie, shall be deemed equivalent to

actual notice to every person claiming under a conveyance, attachment, or execution, made or levied after such record.

SECT. 22. The probate courts in the several counties, concurrently with the supreme judicial court, may hear and determine in equity all matters in relation to trusts created by will, not particularly mentioned in this chapter.

Equity powers.  
R. S. 69, § 12.  
See 1869, 381.

## CHAPTER 101.

## SPECIAL PROVISIONS RELATING TO ESTATES, TRUSTS, AND GUARDIANSHIPS.

## DEATH, REMOVAL, &amp;c., OF EXECUTOR, &amp;c.

## SECTION

1. When executor, &c., dies, administration *de bonis non* granted.
2. Executor, &c., removable for cause, &c.;
3. acts of, before removal, valid.
4. Marriage of executrix, &c., extinguishes authority.
5. Executor, &c., may resign, &c.

## ACCOUNTS, DISCHARGES, COMPROMISES, RELEASES.

6. Accounts of joint executors, &c.
7. Final discharge of executor, &c., and evidence thereof perpetuated.
8. Money due, if not claimed, to be deposited, &c.
9. How paid afterwards.
10. Executors, &c., may be authorized to compromise claims, &c.;
11. to release certain interests in real or personal estates, &c.

## BONDS.

12. Sureties in bonds to be inhabitants of state, &c. Bonds to be approved.
13. Executors, &c., when exempt from giving bond, &c.;
14. bonds of, may be joint or several.
15. When sureties or penalty insufficient, new bond required.
16. Surety may be discharged upon petition, &c.
17. Principal to give new bond, &c.
18. Prior sureties liable until, &c.

## SECTION

19. When bond may be put in suit by creditor;
20. when estate is insolvent;
21. when for benefit of next of kin;
22. or of any other person interested.
23. How bond sued when judge is obligor.
24. Register may authorize suit.
25. Writ how indorsed and who liable for costs of suit.
26. Process to bring in principal obligor.
27. Same subject.
28. Proceedings in suit on bond. Judgment and execution.
29. Moneys received thereon, how disposed of.
30. *Scire facias* to recover further damages.

## LIABILITY OF HEIRS, &amp;c., FOR DEBTS OF DECEASED.

31. Estate of deceased in hands of heirs, &c., liable for certain debts.
32. Mode of proceeding in such case.
33. Estate of heir, &c., liable after death.
34. When two or more liable, creditor may proceed in equity.
35. Case of insolvency, &c., of heir or devisee.
36. New defendants may be summoned in, and amendments allowed.
37. Heirs, &c., liable to contribute between themselves.

## ESTATES OF PERSONS NOT INHABITANTS OF THIS STATE.

38. Administration of estate of foreigner, &c.
39. Settlement of such estate;
- 40, 41, 42. if estate is insolvent.

*Executor mortg*  
1875 & 151.

1876 & 79

*mortgage of real estate*  
1876, 199

1873 & 253

## DEATH, REMOVAL, &amp;c., OF EXECUTOR, &amp;c.

SECTION 1. When a sole or surviving executor or administrator dies without having fully administered an estate, if there is personal estate of the deceased not administered to the amount of twenty dollars, or debts to that amount remaining due from the estate, or any thing remaining to be performed in execution of the will, the probate court shall grant letters of administration, with the will annexed or otherwise as the case may require, to some suitable person to administer the goods and estate of the deceased not already administered.

When executor, &c., dies, administration *de bonis non* granted.  
R. S. 63, § 10.  
R. S. 64, § 14.  
2 Pick. 361.  
3 Met. 187.  
See Ch. 85, § 16.  
102 Mass. 190.  
Executor, &c., removable for cause, &c.  
R. S. 63, § 7.  
R. S. 64, § 15.  
12 Mass. 190.  
11 Met. 104.  
1 Allen, 854.  
10 Allen, 124.  
106 Mass. 39.

SECT. 2. When an executor or administrator residing out of this state, having been duly cited by the probate court, neglects to render his accounts and settle the estate; or when an executor or administrator becomes insane or otherwise incapable of discharging the trust, or evidently unsuitable therefor; the probate court may remove him; and thereupon the other executor or administrator, if there is any, may

proceed in discharging the trust there is no other executor or administration of the estate not shall be deemed fit, in like man removed were dead.

Executor's acts  
before removal,  
valid.  
R. S. 70, § 20.

SECT. 3. When an executor or administration are revoked, all personal estate, made lawfully by the good faith on the part of the put by such executor or administrator

Marriage of ex-  
ecutrix, &c.  
R. S. 43, § 9.  
R. S. 64, § 17.  
14 Mass. 256.  
17 Mass. 341.  
6 Met. 194.  
7 Allen, 427.  
See 1869, 409.

SECT. 4. When an unmarried tratrix, either alone or with another not be executor or administrator operate as an extinguishment of or administrator, if there is any, as if she were dead. If there is administration may be granted or

Executor, &c.,  
may resign, &c.  
1843, 97.  
8 Met. 187.  
11 Met. 104.

SECT. 5. An executor or administrator allowed to resign his trust, when it is proper; and upon such resignation, with the will annexed, require, to some suitable person, already administered.

#### ACCOUNTS, DISCHARGE

Accounts of  
joint execu-  
tors, &c.  
R. S. 70, § 31.  
R. S. 79, § 33.  
Final discharge  
of executor,  
&c.; and evi-  
dence thereof  
perpetuated  
R. S. 70, § 32.  
See Ch. 98.  
101 Mass. 696.

SECT. 6. Probate courts may appoint joint executors, administrators, or one of them.

SECT. 7. When an executor, administrator, or guardian, has paid or delivered over to the other property in his hands, as he may perpetuate the evidence within one year after the decree or of the delivery over of such satisfaction of the court, and verified as his final discharge and charge shall forever exonerate him from liability under such decree, unless manifest error

Money due, if  
not claimed, to  
be deposited,  
&c.  
R. S. 70, § 33.

SECT. 8. If any sum of money is due to a decedent, and remains for payment, the court to be paid over, remains for the administrator, guardian, or trustee of the same, may deposit it in some savings bank, or invest it in bank stock or other securities, and the interest shall accumulate for the benefit of the decedent, or investment shall be made in the court for the time being, and the judge and his successors in office making such deposit or investment, shall make a memorandum thereof, with the title thereto, which shall be a payment.

How paid after-  
wards.  
R. S. 70, § 34.  
Compensation of  
executor, &c.  
1855, 432.  
8 Allen 173.  
See 1861, 174.  
1864, 173.  
1867, 186.  
Release of ex-

SECT. 9. When the person entitled to the estate has been appointed, the judge of his right to receive the same, shall be paid over and transferred to him.

SECT. 10. Probate courts may appoint guardians, and trustees, to adjust the claims in favor of or against the estate.

SECT. 11. They may authorize

ees to release and discharge, upon such terms and conditions proper, any vested, contingent, or possible right or interest to the persons or estates by them represented, in or to any personal estate, whenever it appears to be for the benefit of the estates in trust.

# BONDS.

2. The sureties in every bond given to the judge of a probate shall be inhabitants of this state, and such as the judge deems proper, and no bond required to be given to the judge of the probate, or filed in the probate office, shall be sufficient, unless approved by the judge, and his approval thereof under his signature is written thereon.

3. Executors, administrators, guardians, trustees, and other persons may be exempted by the probate court from giving bond for the proceeds of sales of real estate, except when authorized to make

4. When two or more persons are appointed executors, administrators, or testamentary trustees, the probate court may take a joint bond with sureties from each, or a joint bond with sureties

5. When the sureties or the penal sum in any bond given to the judge of a probate court are insufficient, the supreme judicial court, on the petition of any person interested in the estate, may require a new bond, with surety or sureties, and in such penal sum, as the court shall

6. Any surety in a bond given to the judge of a probate court, upon his petition to the supreme judicial court or the probate court, may be discharged from all further responsibility, if the court, after notice to all persons interested, deems it reasonable and proper; and the principal shall thereupon give a new bond, with such surety or sureties, as the court shall order.

7. If, in the cases specified in the two preceding sections, the principal does not give such new bond within such time as is ordered by the court, he shall be removed from his trust, and some other person appointed in his stead.

8. When a new bond is required as above provided, the principal on the prior bond shall be liable for all breaches of the condition of the prior bond before the new bond is approved by the judge.

9. The bond given by executors or administrators for the faithful discharge of their trust may be put in suit by any creditor of the estate, for his own benefit, when he has recovered judgment for his debt from the executors or administrators, and they have neglected to pay the same, or show sufficient cause why the creditor should be taken on execution for that debt.

2 Allen, 587. 108 Mass. 222. See Ch. 99, § 20.

When the estate is insolvent, a suit on the bond may be brought by the creditor, when the amount due to him has been ascertained by the court of distribution, if the executor or administrator neglects to pay the same when demanded.

When the estate is insolvent, a suit on the bond may be brought by a person who is next of kin to the decedent, after a decree of the court of distribution, if the executor or administrator neglects to pay the same when demanded.

When the estate is insolvent, a suit on the bond may be brought by any creditor, next of kin, legatee, or

tain interests in real or personal estates, &c.  
1855, 307, § 2.  
See 1843, 230.  
1859, 85.

Sureties to be inhabitants of state.  
Bonds approved.  
R. S. 70, § 2.  
R. S. 83, § 32.  
5 Pick. 76.  
7 Allen, 425.  
12 Allen, 330.

Executors, &c., when exempt from giving bond, &c.;  
1850, 196.

bonds of, may be joint or several.  
R. S. 70, § 2.  
105 Mass. 89.

When sureties or penalty insufficient, new bond required.  
R. S. 70, § 27.  
1851, 31.  
8 Cush. 465.  
105 Mass. 89.

Surety may be discharged upon petition, &c.  
R. S. 70, § 28.  
1843, 56, § 1.

Principal to give new bond.  
R. S. 70, § 29.  
1843, 56, § 2.  
1851, 31.

Prior sureties liable until, &c.  
R. S. 70, § 30.  
1843, 56, § 3.

When bond may be put in suit by creditor;  
R. S. 70, § 3.  
12 Mass. 670.  
20 Pick. 53.  
21 Pick. 58.  
1 Met. 383.  
9 Met. 525.  
1 Gray, 305.

when estate is insolvent;  
R. S. 70, § 4.

when for benefit of next of kin;  
R. S. 70, § 5.

or of any other person interested.  
R. S. 70, § 6.  
16 Mass. 624.  
9 Met. 525.





## OF HEIRS, &c., FOR DEBTS OF DECEASED.

for whose use the execution is expressed to be  
 as the judgment creditor, and may cause  
 e and for his benefit, as if the action had been  
 it recovered in his name.

Execut  
 served.

received on such execution (unless it is awarded  
 r person next of kin as provided in the first and  
 he preceding section) shall be paid to the co-  
 ator, if there is any, or to whomsoever is then  
 administrator, and shall be assets in his hands,  
 ling to law.

Money  
 thereon  
 posed c  
 R. S. 7  
 6 Met.

utor or administrator commits a new breach of  
 l, or if a creditor, next of kin, legatee, or other  
 estate, has a claim for further damages on  
 maladministration of the executor or admin-  
 cias on the original judgment may be sued out  
 ovided for the commencement of the original  
 thereupon proceed to award a new execution,  
 have been done in the original suit.

Scire j  
 recover  
 damage  
 R. S. 7

## HEIRS, &c., FOR DEBTS OF DECEASED.

ettlement of an estate by an executor or admin-  
 oration of the time limited for the commence-  
 im by the creditors of the deceased, the heirs,  
 legatees, of the deceased, shall be liable, in the  
 ollowing sections, for all debts which could not  
 st the executor or administrator, and for which  
 chapter ninety-seven.

Estate  
 in han  
 &c., in  
 certain  
 R. S. 7  
 18 Mas  
 8 Allen  
 104 Ma

whose right of action accrues after the expira-  
 tion, and whose claim has not been presented  
 f presented has not been allowed as provided  
 nay by action commenced within one year next  
 ch right of action accrues, recover the same

Mode c  
 ing in  
 R. S. 7  
 1 Met.  
 101 Ma  
 106 Ma

the heirs and next of kin of the deceased, and the devisees and  
 under his will; each one of whom shall be liable to the creditor  
 ling the value of real or personal estate that he  
 ceased. But if by the will of the deceased, any  
 one or more of the devisees or legatees, is made  
 debt in exoneration of the residue of the estate,  
 legatees, such provisions of the will shall be  
 persons and estate so exempted shall be liable  
 lebt as cannot be recovered from those who are  
 h.

11/4

; next of kin, devisee, or legatee, dies without  
 portion of such debt, his executors and admin-  
 herfor as for his proper debt, to the extent to  
 en liable if living.

Estate  
 &c., in  
 death.  
 R. S. 7

se specified in the two preceding sections more  
 for the debt, the creditor may recover the same  
 the supreme judicial court against all persons  
 hem as are within reach of process. The court  
 verdict of a jury if either party requires it, what  
 iff, and shall decide according to the course of  
 ow much each one of the defendants is liable to  
 id may award execution and other proper pro-

When  
 more 11  
 credito  
 ced in  
 R. S. 7  
 1855, 1  
 1856, 3  
 10 Mas  
 22 Picl  
 1 Met.  
 12 Met  
 15 Gra  
 16 Gra

; devisee, or other person, who was originally  
 olvent, or unable to pay his proportion thereof,  
 cess, the others shall be liable to the creditor

Case of  
 vency,  
 heir of  
 R. S. 7







AND BY EXECUTORS AND

its, of the deceased

set forth in the petition  
cause is shown to the contrary, the co  
and the executor or administrator shall b  
execute conveyances which shall be effectua  
the estate, right, title, and interest, in th  
the deceased had therein at the time of his  
chargeable with the payment of his debts.

11. The real estate so liable to be so  
the deceased, and all rights of entry ar  
rights and interests in lands, which by law w  
which would have been liable to attachm  
of the deceased in his lifetime. No cl  
action shall be made more than five years

See Ch. 108, §

12. An executor or administrator, license  
conveyed by the deceased, or fraudulently  
him, or to which he had a right of entry or  
veyance, may first obtain possession the  
and may sell the same at any time with  
possession. 8 Met. 51. 14

13. He may make a formal entry upon th  
n on his own seisin acquired by such entry  
or administrator.

14. (R.) [An executor or administrator  
all, before fixing on the time and place of  
oath in substance as follows: that in dis  
is licensed to sell he will use his best judg  
place of sale, and will exert his utmost e  
me in such manner as will be most for t  
interested therein.]

15. He shall give public notice of the tin  
causing notifications thereof to be posted,  
e sale, in some public place in the city or  
st dwelt, and in two adjoining cities or to  
the county, and also in the city or town v  
publishing the same three weeks successively  
granting the license may order.

16. An affidavit of the executor or adm  
l by him to give such notice, being mac  
with a copy of the notice in the probate of  
sale, or at any time afterwards by permis  
of the executor or administrator and satisfi  
was given as ordered, shall  
, and manner, of giving the  
eral registers to record suc

shall be made by public a  
the executor or administra  
concerned therein that the a  
time not exceeding fourteen  
f such adjournment shall b  
and place first appointed fo  
e than one day, further no  
publishing, as time and circum  
estator has given a legacy,  
ministration, his goods, chatt  
ay, the executor, or admini









13. The license shall be in force for more than one year after the expiration thereof, except when a sale is made of land recovered by the executor or administrator as provided in sections twelve and thirteen.

*Licenses, how long in force.*  
R. S. 71, § 19.  
R. S. 72, § 13.  
2 Cush. 184.

14. In all sales by executors, administrators, or guardians, made in this state or elsewhere, of part or the whole of the real estate of a deceased person or ward, the surplus of the proceeds remaining after the final settlement of the accounts shall be considered as real estate, and shall be disposed of to the same persons and in the same proportions as the real estate would descend or be disposed of by the laws of the state if not sold.

*Surplus of sales considered real estate.*  
R. S. 71, § 34.  
R. S. 72, §§ 5, 17.  
8 Mass. 518.  
9 Pick. 180.  
110 Am. 232.

15. If a person appears and objects to the granting of a license to sell real estate, and it appears to the court that either the petition or the objection thereto is unreasonable, they may award costs to the party.

*When costs may be awarded.*  
R. S. 71, § 38.  
R. S. 72, § 18.

16. No action for the recovery of any estate sold by an executor or administrator under this chapter shall be maintained by any heir or person claiming under the deceased, unless it is commenced within five years next after the sale; and no action for any estate sold by a guardian shall be maintained by the ward or by any person claiming under him, unless commenced within five years next after the termination of the guardianship; except that persons out of the state, and others under legal disability to sue at the time when the cause of action first accrues, may commence such action at any time within five years after the removal of the disability or their return to the state.

*Actions for lands sold by executor, administrator, or guardian, limited to five years, unless, &c.*  
R. S. 71, § 37.  
R. S. 72, § 19.  
9 Cush. 223.  
10 Gray, 81.

No entry, unless by judgment of law, shall be made upon the sale, with a view to avoid the sale, unless within the times of limitation before prescribed for the commencement of an action.

17. (R.) [No action relating to an estate sold under this chapter shall be maintained by an heir or other person claiming under the deceased, or in favor of a ward or a person claiming under him, contests the validity of the sale, shall be avoided on account of the deed not having been executed or returned within one year after the granting of the license, nor on account of any irregularity in the proceedings, provided it appears:— That the executor, administrator, guardian, or other person, was duly appointed to make the sale by a court of competent jurisdiction:—

*Requisites of valid sale, as against heir or ward;—*  
R. S. 71, § 33.  
R. S. 72, § 20.  
1840, 97.  
2 Cooley, 608.  
9 Pick. 285.  
2 Cush. 184.  
8 Allen, 25.  
105 Mass. 89.  
(R.) *Repealed by 1860 c. 2, and substitute.*  
1864, 137.

That he gave a bond which was approved by the judge of probate court, in case a bond was required upon granting the license.

That he took the oath prescribed in this chapter:

That he gave notice of the time and place of sale as prescribed herein: and,

That the premises were sold accordingly by public auction, and sold by one who purchased them in good faith.]

18. If the validity of a sale is drawn in question by a person claiming adversely to the title of the deceased or the ward, or claiming title that is not derived from or through the deceased or ward, the sale shall not be void on account of any irregularity in the proceedings, if it appears that the executor, administrator, or guardian, was duly appointed to make the sale by a court of competent jurisdiction, and that the sale was lawfully executed and acknowledged in legal form a deed for the sale of the premises.

*as against claimants adverse to heir or ward.*  
R. S. 71, § 40.  
R. S. 72, § 22.  
105 Mass. 30.

19. Every person authorized to make sale of lands under this chapter shall be required upon application to the probate court by an executor, ward, or other person, interested in the estate, to make oath to all matters touching his exercise and fulfilment of his duty, including all proceedings under it from its first grant, as fully as if he were personally liable to account and be examined in reference to personal estate. If, upon application to the exercise of such license or a sale under it, there is

*Persons making sales may be examined upon oath as to such sales. Liability for misconduct, &c.*  
R. S. 71, § 39.  
R. S. 72, § 21.  
1857, 71, § 1.



defraud the creditors of the debtor or on a  
 plied, whereby he is entitled to a present  
 provided in chapter one hundred and four,  
 s debts in the manner hereinafter provided.

, 64, 257, 262. 97 Mass. 77. 99 Mass. 479. 102 Mass. 477.

ch could be lawfully barred by the person  
 en on execution in the same manner as es-  
 whoever lawfully holds such premises under  
 estate in fee simple therein.

of an execution on the debtor's land, the  
 to be appraised by three disinterested and  
 shall be appointed by the creditor, one by  
 en, or, if the debtor is absent from or not  
 agent or attorney if he has any known to  
 the officer. If the debtor is absent from or  
 nd has no agent or attorney known to the  
 t an appraiser, the officer shall appoint one  
 appointed shall be sworn before a justice of  
 hfully and impartially to appraise the real  
 en on the execution.

1862, 190. 1870, 264. 1871, 122. 106 Mass. 507.

shall proceed with the officer to view the  
 far as is necessary to form a just estimate  
 te of their appraisement shall be indorsed  
 by them.

l upon, whether it is an entire piece or an  
 whether the debtor's estate therein is a fee  
 d whether it is in possession, reversion, or  
 d by metes and bounds, or otherwise, with  
 ssary in a common conveyance of land, and  
 mises may be known and identified. Such  
 ed in the certificate of the appraisers or  
 n either of them may be referred to and

1 is levied at the same time upon several  
 ay be separately appraised, or all may be  
 several pieces are taken successively on the  
 et of appraisers may be appointed for each  
 d by the appraisers first appointed.

one appraiser and his refusal to sign the  
 f he was sworn and acted with the others,  
 the execution; but in such case the certifi-  
 e sufficient.

ie value of the estate of the debtor, the ap-  
 state in fee simple in possession, unless it is  
 ription indorsed on the execution to be a  
 o all the freehold estate and interest which  
 ses, shall be taken and pass by the levy,  
 an is mentioned in said description.

eld by a debtor in joint tenancy or in com-  
 of belonging to the debtor may be taken on  
 eafter held in common with the co-tenant.  
 ebtor is more than sufficient to satisfy the  
 made upon an undivided portion of that  
 the appraisers and to contain as much as  
 fy the execution; the portion thus taken to  
 debtor and the other co-tenant.

emises levied upon consist of a mill, mill-  
 e, which cannot be divided without damage

3 Met. 26.  
 2 Gray, 533.  
 9 Gray, 235.  
 11 Gray, 217.  
 12 Gray, 578.  
 2 Allen, 77.  
 5 Allen, 107.  
 7 Allen, 96.

Estates tall may  
 be taken, &c.  
 R. S. 73, § 2.  
 4 Mass. 195.

Land to be ap-  
 praised, &c.  
 R. S. 73, § 3.  
 1848, 317.  
 1862, 1.  
 1862, 256.  
 7 Greenl. 14.  
 7 Mass. 71.  
 8 Mass. 113.  
 11 Mass. 468, 515.  
 17 Mass. 434.  
 2 Pick. 382, 442.  
 3 Met. 251.  
 2 Cush. 33.  
 10 Cush. 247.  
 16 Gray, 335.  
 2 Allen, 338.  
 4 Allen, 406.

Appraisers to  
 view land, cer-  
 tify, &c.  
 R. S. 73, § 4.  
 14 Mass. 23.  
 2 Pick. 332, 564.

Land, how de-  
 scribed in cer-  
 tificate, &c.  
 R. S. 73, § 5.  
 9 Mass. 94.  
 11 Mass. 163.  
 9 Pick. 35.  
 4 Met. 404.  
 8 Gray, 429.  
 4 Allen, 417.  
 101 Mass. 191.

In separate  
 pieces, how ap-  
 praised.  
 R. S. 73, § 6.  
 7 Mass. 71.  
 11 Mass. 515.  
 2 Pick. 382.  
 10 Allen, 494.

Certificate by  
 two appraisers,  
 when sufficient.  
 R. S. 73, § 7.  
 8 Mass. 284.  
 14 Mass. 143.  
 2 Pick. 381.

Estate to be val-  
 ued as a fee si-  
 ple, unless oth-  
 erwise expressed.  
 R. S. 73, § 8.  
 14 Mass. 404.  
 1 Met. 345.  
 106 Mass. 507.

Execution, how  
 levied on estate  
 of joint tenant,  
 or tenant in  
 common.  
 R. S. 73, § 9.  
 12 Mass. 343.  
 13 Mass. 57.  
 12 Allen, 36.

how levied on  
 estates incorpa-  
 ble of division.







justices of the peace as before provided, and shall require the debtor, within such time as they may order, to bring into court, or deposit with the clerk for the use of the creditor, the amount due for redemption. Upon the debtor's complying with the order, he shall be entitled to judgment and execution for seisin of the premises, as at common law.

SECT. 31. The court may upon such suit award costs to either party as equity requires. But the creditor shall not be required to pay costs, unless it appears that he has unreasonably neglected to render, when requested, a just and true account of the amount due on the judgment, and of the money expended in repairing and improving the premises, and also of the rents and profits thereof; or unless it appears that a sufficient sum was tendered to him for the redemption of the premises, and he neglected for seven days thereafter to execute and deliver a release thereof as before required. And if the creditor has, before the commencement of the suit, tendered such a deed of release, and alleges such tender and brings the deed into court to be delivered to the debtor, he shall recover costs.

Costs in suit in equity for redemption, how awarded.  
R. S. 73, § 29.  
1856, 83, § 2.

SECT. 32. When an execution is levied on the rents and profits of an estate for life, the debtor may redeem the same at any time before the debt with interest thereon is fully satisfied, by paying or tendering to the creditor the sum then remaining due to him; and the proceedings with regard to such redemption shall be in all other respects the same as are prescribed for the redemption of other real estate.

Estate for life, how redeemed when levy is on rents and profits.  
R. S. 73, § 30.

#### SET-OFF, &c., OF MORTGAGED LANDS.

SECT. 33. When any rights mentioned in section one of redeeming mortgaged lands, are taken and set off on execution, the appraisers shall deduct the value of the encumbrance, or the amount of the mortgage debt, when known, from the estimated value of the premises, and the sum so deducted shall be stated in the return of the execution.

Right of redemption may be set off.  
R. S. 73, § 31.  
11 Mass. 223.  
13 Mass. 400.  
22 Pick. 390.

4 Met. 404. 10 Cush. 523. 10 Allen, 494. 105 Mass. 263.

SECT. 34. If, after an execution is levied in the common form, there proves to be a mortgage or any other lien on the premises, or a right or estate of homestead therein, not known, or allowed for, or not fully allowed for, by the appraisers, the creditor shall nevertheless be entitled to hold the premises, except the right or estate of homestead, by force of the execution as against the debtor, and may recover, in a new action against the debtor, the amount of the homestead right or estate and the amount which he shall lawfully pay on account of such mortgage or other lien or so much thereof as has not been deducted and allowed for in the estimate of the appraisers.

When mortgage is not fully allowed for, creditor to hold premises, &c.  
R. S. 73, § 32.  
22 Pick. 390.

SECT. 35. An estate taken and set off as mentioned in the two preceding sections, may be redeemed at any time within one year after the levy of the execution, in the same manner, and the debtor shall have the same remedies in that behalf, as provided in this chapter for the redemption of lands not mortgaged.

When mortgaged estates set off may be redeemed.  
R. S. 73, § 33.  
22 Pick. 390.  
13 Allen, 263.

SECT. 36. If the creditor pays the debt due on the mortgage, the judgment debtor may redeem the mortgage from the creditor, at the time and upon the terms prescribed for redeeming the same from the mortgagee if no execution had been levied thereon.

Mortgage paid by creditor, how redeemed;  
R. S. 73, § 34.  
22 Pick. 390.  
5 Met. 90.

SECT. 37. If the debtor does not redeem the mortgage from the creditor as provided in the preceding section, the creditor shall hold the premises as an assignee of the mortgage and free from any right of redemption, notwithstanding the debtor has redeemed or offered to redeem the right that was taken under the execution.

If not redeemed, creditor to hold premises.  
R. S. 73, § 35.  
5 Met. 90.

SECT. 38. If the debtor does not within one year after the levy redeem the right that was taken on the execution, the creditor shall hold the premises against the debtor, notwithstanding the debtor may have redeemed or offered to redeem the mortgage.

If right levied on is not redeemed.  
R. S. 73, § 36.





redemption as before provided, or if there has been no tender, the debtor may have like remedies for recovering the right of redemption as are before provided in like cases for the redemption of land that is not under mortgage.

R. S. 73, § 44.  
19 Pick. 467.  
2 Cush. 141.

SECT. 47. When the right of redemption is of lands in different counties, the same may be taken and set off or sold on execution by an officer of either county; and for that purpose executions issued by justices of the peace and police courts may run into any county.

Right of redemption of land in different counties.  
See Ch. 188, § 21.  
and Ch. 120, § 6.

#### SPECIAL PROVISIONS.

SECT. 48. When the execution is levied on lands or rights, the record title to which fraudulently stands in the name of a person other than the debtor, in either manner mentioned in section one, and such other person is in possession claiming title thereto, the levy shall be void unless the judgment creditor to whom the land is set off or the purchaser of the right of redemption, as the case may be, commences his suit to recover possession thereof, within one year after the return of the execution.

If levy is on land the record title to which is in name of other than debtor, &c., action for possession to be brought, &c.  
1874, 188  
110 m. 273  
115 m. 74  
1876-233  
1844, 107, § 4.  
1855, 453.  
8 Allen, 408.  
6 Allen, 401.

SECT. 49. The lawful fees and charges of levying an execution in any of the modes before provided, shall in all cases be added to the amount due on the execution and considered as part thereof, in the setting off and sale of estates on execution, and also in the redemption thereof, and in every thing relating to the proceedings under the execution.

Fees and charges of levy to be added to debt.  
R. S. 73, § 45.  
2 Allen, 532.  
9 Allen, 147.

SECT. 50. Every thing required in this chapter to be done by a debtor in relation to the redemption of an estate taken and set off or sold on execution, may be done by his heirs or assigns, or his executors or administrators, or by any person lawfully claiming under him or them, in like manner and with like effect as if done by himself; except that in case of a recovery of the premises by an executor or administrator, the recovery shall operate only as a discharge of the lien or encumbrance on the land, and the heir or other person entitled thereto shall be deemed to be seised thereof accordingly.

Proceedings by heirs, executors, administrators, &c., of debtor;  
R. S. 73, § 46.  
19 Pick. 467.  
13 Allen, 262.

SECT. 51. Every thing required in this chapter to be done by or to a creditor in relation to such redemption, shall and may be done by or to his heirs or assigns, or his executors or administrators, as the case may be, or by or to any person lawfully claiming under him or them, in like manner and with like effect as if done by or to such creditor.

by heirs, &c., of creditor.  
R. S. 73, § 47.

SECT. 52. All rights of redeeming land taken and set off on execution may be taken and sold on another execution, in like manner as the right of redeeming mortgaged land may be taken and sold; and the debtor and those claiming under him may redeem the right sold under such second execution, in like manner as if it had been a right of redeeming mortgaged land. All proceedings in levying such second execution, and the redemption of the right sold under it, and all the rights and obligations of the several parties in relation to such levy and redemption, shall be substantially the same as if the property so taken had been a right of redeeming mortgaged land.

Right of redeeming land, set off on execution, may be taken and sold on another execution.  
Proceedings.  
R. S. 73, § 48.  
12 Mass. 387.  
1 Pick. 493.

SECT. 53. The real estate of a deceased testator or intestate may be taken on execution on a judgment recovered against his executor or administrator for the proper debt of the deceased, with costs of suit and the fees and charges of levying the execution, and shall be appraised and set off, or sold, in like manner as it might have been if the judgment had been rendered and the execution issued and served against the testator or intestate in his lifetime.

Land of deceased persons may be taken on execution;  
R. S. 73, § 49.

SECT. 54. An estate taken as provided in the preceding section may be redeemed by the executor or administrator, or by the heir of the deceased, or by any person lawfully claiming under him or them, in like

may be redeemed as if taken during life.  
R. S. 73, § 50.



by which the property is acquired, that it is designed to be held as a homestead; or after the title has been acquired such design shall be declared by writing duly signed, sealed, acknowledged, and recorded, in the registry of deeds for the county or district where the property is situated. But the acquisition of a new estate of homestead in either of said modes, shall operate to defeat and discharge any estate or right of homestead previously existing.

SECT. 3. All existing estates or rights of homestead which have been acquired under any law heretofore in force, shall continue to be held and enjoyed notwithstanding the repeal of such law; and the preceding section shall not require the design so to hold the same to be declared and recorded anew. But no person shall hold exempted as a homestead, property to the value of more than eight hundred dollars.

SECT. 4. Property which is subject to a mortgage executed before an estate or right of homestead was acquired therein, or executed afterwards and containing a release thereof, shall be subject to any estate or right of homestead provided for in this chapter, except against the mortgagee and those claiming under him, in the same manner as if the property were unencumbered: *provided*, that when in such case a party becoming the owner of the residue above an estate of homestead and a mortgagee, redeems the mortgage, he shall not be allowed to set up the same against the owner of the estate of homestead, his widow, heirs, or assigns, unless such owner of the estate of homestead, his widow, heirs, or assigns, offer to redeem such residue in case of set-off or sale on execution.

SECT. 5. No property shall by virtue of this chapter be exempt from levy for taxes, or for a debt contracted for the purchase thereof, or for a debt contracted before the deed or writing required by section two is recorded, or before the rights of homestead mentioned in section three were acquired; nor shall buildings on land not owned by the householder be exempt from sale or levy for the ground rent of the lot of land whereon they stand.

SECT. 6. Such estates and rights of homestead shall not defeat or otherwise affect any mortgage, or other encumbrance, or lien, previously existing by virtue of any deed, attachment, policy of insurance, or otherwise.

SECT. 7. The property in which an estate or right of homestead exists may be conveyed or released by a deed duly acknowledged and recorded, in which the wife of the householder, or her guardian under a license from the probate court if she is insane, joins for the purpose of releasing the right of homestead, in the same manner as she may join in releasing dower.

SECT. 8. No conveyance of property in which an estate or right of homestead exists, and no release or waiver thereof, shall operate to convey that part so held and exempted, or to defeat the right of the owner or his wife and children to have a homestead therein, except by deed acknowledged and recorded, in which the wife of the owner, if he has any, joins for the purpose of releasing the same in the manner in which she may release her dower, or unless the same is released as provided in chapter one hundred and eight. But any deed duly executed without such release, shall be valid to pass according to the terms of the instrument any title or interest in the property beyond the estate or right of homestead and the wife's right of dower.

SECT. 9. When an estate or right of homestead exists in property in which other parties have an interest, the party entitled to the homestead, or any other party interested, may upon petition have partition thereof like tenants in common.

SECT. 10. When the property of a debtor is assigned under the laws in relation to insolvent debtors, and such debtor claims, and it appears

11 Allen, 37.  
101 Mass. 420.

Rights of homestead under former laws saved.  
1851, 340.  
1855, 238.  
1857, 298, §§ 1, 18.  
13 Gray, 21.  
6 Allen, 510.  
12 Allen, 80.  
97 Mass. 392.

Mortgaged property subject to rights of homestead, except, &c.  
4 Allen, 347, 516.

Homestead property not exempt from levy for taxes, ground rent, &c.  
1857, 298, § 4.  
9 Gray, 16.  
6 Allen, 427.  
10 Allen, 146.  
11 Allen, 145.

Previous liens, &c., not defeated.  
1857, 298, § 5.

Homestead and rights may be conveyed and released.  
1857, 298, §§ 1, 7, 10. See Ch. 90, § 8; Ch. 108, §§ 19, 20.

Same subject  
1857, 298, §§ 1, 3, 6, 7, 10, 12.  
2 Gray, 383.  
See Ch. 90, § 8.  
11 Gray, 214, 332.  
2 Allen, 202, 205.  
6 Allen, 71, 510.  
8 Allen, 575.

Partition.  
1857, 298, § 14.  
5 Allen, 77.  
6 Allen, 401.  
9 Allen, 241.

Homestead estate may be set off, in



## TITLE VI.

## CHAPTER 105.

## OF THE PREVENTION OF FRAUDS AND PERJURIES.

## SECTION

1. No action to be brought on certain contracts, unless in writing.
2. Consideration need not be in writing.
3. New promise by debtor discharged in insolvency, &c., not binding unless in writing, &c.

## SECTION

4. No action on representation of another's credit, &c., unless in writing;
5. on contract for goods of value of \$50, unless, &c.
6. Contracts for sale of certain stocks void, unless vendor is owner, &c., at time of contracting.

SECTION 1. No action shall be brought in any of the following cases, that is to say:—

First. To charge an executor, administrator, or assignee under any insolvent law of this commonwealth, upon a special promise to answer damages out of his own estate:

Second. To charge a person upon a special promise to answer for the debt, default, or misdoings of another:

Third. Upon an agreement made upon consideration of marriage:

Fourth. Upon a contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them: or

Fifth. Upon an agreement that is not to be performed within one year from the making thereof:

Unless the promise, contract, or agreement, upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized.

2 Allen, 417. 3 Allen, 540. 5 Allen, 870. 9 Allen, 8. 11 Allen, 123, 361, 365. 97 Mass. 208.  
98 Mass. 297. 99 Mass. 392, 461. 101 Mass. 297, 409, 449. 102 Mass. 24, 204. 108 Mass. 408.  
106 Mass. 442, 446. 108 Mass. 56, 401.

SECT. 2. The consideration of such promise, contract, or agreement, need not be set forth or expressed in the writing signed by the party to be charged therewith, but may be proved by any other legal evidence.

SECT. 3. No promise for the payment of any debt made by an insolvent debtor who has obtained his discharge from said debt under proceedings in bankruptcy or insolvency, shall be evidence of a new or continuing contract, whereby to deprive a party of the benefit of relying upon such discharge in bar of the recovery of a judgment upon such debt, unless such promise is made by or contained in some writing signed by the party sought to be charged, or by some person thereunto by him lawfully authorized: but this section shall not apply to such promise made prior to the fifteenth day of March in the year eighteen hundred and fifty-six.

SECT. 4. No action shall be brought to charge a person upon or by reason of any representation or assurance made concerning the character, conduct, credit, ability, trade, or dealings, of any other person, unless such representation or assurance is made in writing and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

SECT. 5. No contract for the sale of goods, wares, or merchandise, for the price of fifty dollars or more, shall be good or valid, unless the purchaser accepts and receives part of the goods so sold, or gives something in earnest to bind the bargain, or in part payment; or unless some

Certain contracts to be in writing.

R. S. 74, § 1.  
1848, 252.  
1 Met. 313, 483.  
3 Met. 393.  
4 Met. 580.  
6 Met. 319.  
7 Met. 46, 57.  
8 Met. 34, 59.  
11 Met. 411.  
13 Met. 335, 520.  
1 Cush. 73.  
4 Cush. 42.  
5 Cush. 90, 488.  
8 Cush. 223.  
1 Gray, 131, 391.  
5 Gray, 41, 42, 492.  
6 Gray, 32, 500.  
7 Gray, 35.  
8 Gray, 233.  
9 Gray, 76.  
11 Gray, 168, 235.  
12 Gray, 367.

111m. 29

108m. 2116  
116m. 541

Consideration not in writing.

R. S. 74, § 2.  
5 Cranch, 142.  
4 B. & A. 595.  
17 Mass. 122.  
New promise by debtor discharged in insolvency, &c., to be in writing, &c.  
1856, 18, §§ 1, 2.  
7 Gray, 460.  
7 Allen, 463.

No action on representation of another's credit, &c., unless in writing;  
R. S. 74, § 3.  
6 Met. 246.  
13 Gray, 287.  
14 Gray, 508.

on contract for goods of value of \$50, unless, &c.  
R. S. 74, § 4.  
20 Pick. 9, 124.



son's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, or mother's sister.

SECT. 2. No woman shall marry her father, grandfather, son, grandson, step-father, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, or mother's brother.

SECT. 3. In all cases mentioned in the two preceding sections in which the relationship is founded on marriage, the prohibition shall continue notwithstanding the dissolution of such marriage by death or divorce, unless the divorce is for a cause which shows the marriage to have been originally unlawful or void.

SECT. 4. All marriages contracted while either of the parties has a former wife or husband living, except as is provided in chapter one hundred and seven, shall be void.

1 Pick. 136. 3 Pick. 422. 4 Cush. 51. 3 Cush. 386.

SECT. 5. No insane person or idiot shall be capable of contracting marriage.

SECT. 6. When persons resident in this state, in order to evade the preceding provisions and with an intention of returning to reside in this state, go into another state or country and there have their marriage solemnized, and afterwards return and reside here, the marriage shall be deemed void in this state.

SECT. 7. Persons intending to be joined in marriage shall before their marriage cause notice thereof to be entered in the office of the clerk or registrar of the city or town in which they respectively dwell, if within the state. If there is no such clerk or registrar in the place of their residence, the entry shall be made in an adjoining city or town.

SECT. 8. The clerk or registrar shall deliver to the parties a certificate under his hand, specifying the time when notice of the intention of marriage was entered with him, together with all facts in relation to the marriage required by law to be ascertained and recorded, except those respecting the person by whom the marriage is to be solemnized. Such certificate shall be delivered to the minister or magistrate in whose presence the marriage is to be contracted, before he proceeds to solemnize the same.

SECT. 9. If a clerk or registrar issues such certificate to a male under the age of twenty-one years, or a female under the age of eighteen years, having reasonable cause to suppose the person to be under such age, except upon the application or consent in writing of the parent, master, or guardian, of such person, he shall forfeit a sum not exceeding one hundred dollars; but if there is no parent, master, or guardian, in this state competent to act, a certificate may be issued without such application or consent.

clerk or registrar may require of any person applying an affidavit sworn to before a justice of the peace for the application is made, setting forth the age of the person; and such affidavit shall be sufficient proof of age to authorize the clerk to issue the certificate.

Every person applying for such certificate wilfully makes a false statement in relation to the age or residence, parent, master, or guardian, of the parties intending marriage, shall forfeit a sum not exceeding one hundred dollars.

When a marriage is solemnized in another state between persons who were married in this state, and they return to dwell here, they shall, after their return file with the clerk or registrar of the city or town in which either of them lived at the time, a certificate or affidavit of the marriage, including the facts concerning mar-

tions prohibited.  
R. S. 75, § 1.  
See Ch. 165, § 7.

Same subject.  
R. S. 75, § 2.  
See Ch. 165, § 7.

Same subject.  
R. S. 75, § 3.

Polygamy forbidden.  
R. S. 75, § 4.  
1841, 68.  
1855, 426, § 1.

Marriages of idiots, &c., void;

of persons marrying out of state to evade, &c.  
R. S. 75, § 6.  
18 Mass. 157.  
1 Pick. 506.

Intention of marriage to be entered with town clerk, &c.  
1849, 202, §§ 1, 2.  
1850, 121, § 1.  
See 1867, 58.

Certificate to be given to parties by clerk, &c.  
1844, 150, § 1.  
1849, 202, § 1.  
1850, 121, § 2.  
See Ch. 21.

not to issue to certain minors except on application of parent, &c.  
1858, 335, § 1.

Clerk may require affidavit of age.  
1858, 335, § 2.

Penalty for wilful deception.  
1857, 34.

Parties living in state and married out of it to file certificate.  
1839, 135.  
1850, 121, § 3.  
See Ch. 21.

Minors not  
to be married  
without con-  
sent of parents,  
&c.

R. S. 75, § 16.  
1 Gray, 119.  
7 Gray, 483.

Marriages, by  
whom to be  
solemnized, and  
in what place;  
R. S. 75, § 16.

See 1867, 58, § 2.

among Qua-  
kers.  
R. S. 75, § 22.

Persons solemn-  
izing mar-  
riages to keep  
record and  
make returns.  
R. S. 75, § 17.  
1844, 159, § 3.  
See Ch. 27  
10 Allen, 164.

Penalty for not  
making returns;  
R. S. 75, § 18.  
1844, 159, § 3.

on Justice,  
&c., for unlaw-  
fully marrying;  
R. S. 75, § 19.  
1 Gray, 119.  
7 Gray, 483.

on person not  
authorized to  
marry.  
R. S. 75, § 20.  
13 Pick. 111.

Certain mar-  
riages valid,  
though irreg-  
ularly solemn-  
ized.  
R. S. 75, § 24.  
6 Greenl. 148.  
7 Mass. 48.  
1 Pick. 235.

Record of mar-  
riage, &c., to be  
presumptive  
evidence thereof.  
R. S. 75, § 25.

Admission of  
respondent, &c.,  
1840, 84  
1841, 20  
12 Met. 351.  
13 Met. 144.  
1 Cush. 391.  
5 Gray, 95.

riages required by law, and for  
dollars.

SECT. 13. No magistrate or  
other person having reasonable cause to suppose  
mentioned in section nine, with-  
out having the custody of the min-  
or, shall attempt to act.

SECT. 14. Marriages may be  
solemnized in the county for which he is ap-  
pointed; and through the  
gospel ordained according to the  
ritual within the state and continues to  
all marriages shall be solemnized  
by a person solemnizing them resides, or  
to be married reside.

SECT. 15. Marriages among  
Quakers may be solemnized in the manner  
prescribed in the laws of the state.

SECT. 16. Every justice of the  
peace of the records of the meeting where  
or Quakers are solemnized, shall  
keep a record of all marriages solemnized  
before him, together with the  
returns required by law to be recorded  
on the tenth days of each month return  
next preceding, to the clerk or  
the marriage was solemnized, and  
if the marriage resides in the city or town  
return a copy of the record of the  
city or town in which one of the  
marriages so returned shall be recorded.

SECT. 17. Every person neglecting  
the preceding section shall forfeit  
not more than one hundred dol-  
lars.

SECT. 18. A justice of the  
peace who solemnizes a marriage contrary to the provisions  
of this chapter is not duly authorized  
and shall be liable to a fine of not more  
than one hundred dollars.

SECT. 19. Whoever undertakes  
to solemnize a marriage that he is not authorized  
so to do shall be liable to be confined to  
hard labor for a term not less than  
fifty nor more than one hundred  
days.

SECT. 20. No marriage solemnized  
by a justice of the peace or minister of  
the gospel shall be judged to be void, nor  
shall the parties be liable to a fine or  
imprisonment by want of jurisdiction or  
authority or informality in the manner  
of solemnizing the marriage is in other  
respects valid, if the parties have been  
lawfully joined in marriage.

SECT. 21. The record of a marriage  
made by law by the person before whom  
the same is solemnized, or by the clerk or  
registrar of any city or town, shall be  
received in all courts as evidence of the  
fact of such marriage.

SECT. 22. When the fact of a  
marriage has been proved before any court,  
evidence in favor of the party against whom  
the process is issued shall not be received  
as evidence from which the fact of a  
marriage may be inferred.

14 Gray, 411.

5 Allen, 263.



SECT. 23. Marriages solemnized in a foreign country by a consul or diplomatic agent of the United States, shall be valid in this state; and a copy of the record or a certificate from such consul or agent shall be presumptive evidence of such marriage.

Marriages by consul, &c., valid, 5 Allen, 257.

## CHAPTER 107.

### OF DIVORCE.

#### SECTION

1. Certain marriages void without decree.
2. Validity of marriage not to be tried upon collateral issue, &c.
3. Marriage of parties under age of consent, when void, &c.
4. Certain marriages may be declared void by decree of nullity.
5. Marriage may be declared valid by decree.
6. Divorce from bond of matrimony, for what causes decreed;
7. may be decreed for desertion.
8. Libel not defeated by temporary return, &c.
9. Divorce from bed and board, for what causes;
10. from bond of matrimony, may be decreed in certain cases after divorce from bed and board;
11. when libellant has resided in state five years;
12. not decreed unless parties have lived together in state, &c.
- 13, 14. Libels for divorce, in what courts to be brought.
15. Either party may have trial by jury.
16. Libel, how to be signed;
- 17, 18, 19. how to be filed and notice served.
20. Court may order further notice.
21. Guardian for insane respondent.
22. Allowance to wife, and alimony pending suit.
23. Woman divorced, allowed to resume former name.
24. Penalty for cohabiting after divorce.
25. Innocent party may marry again, &c.
26. Party residing in this state, divorced except for adultery, may be authorized to marry again.
27. Issue of marriage in case of divorce for adultery of wife;
28. of marriage prohibited.

#### SECTION

29. Issue of marriage dissolved for insanity, &c.;
30. of marriage dissolved on account of prior marriage.
31. Wife protected during pendency of libel.
32. Custody of children pending libel;
33. after divorce,
34. of minor children of parents divorced in another state, &c.
35. Infant children of divorced persons, natives of this state, not to be removed therefrom, except, &c.
36. Children of parents living separately.
37. Rules as to custody of children.
38. In what cases wife entitled to dower.
39. Upon divorce for adultery of wife, husband to hold her estate, &c.
40. Upon divorce except for adultery of wife, she shall hold her real estate, &c.
41. Court may appoint trustee of property awarded to wife.
42. Husband may be examined on oath as to personal estate of wife.
43. In certain cases wife may be allowed alimony upon decree of divorce, &c.
44. Alimony, &c., in certain cases,
45. court may in equity enforce decrees of.
46. Security for payment of alimony.
47. Decree respecting alimony, &c., may be revised and altered;
48. may be made or revised at any time after decree of divorce.
49. Costs on petitions, &c.
50. On certain libels for divorce, husband's property may be attached.
51. Attachment may be made on summons or order of notice in certain cases, &c.
52. Laws relating to attachments to apply.
53. Courts of proceedings in suits under this chapter.
- 54, 55. Divorces obtained out of this state.

SECTION 1. All marriages solemnized within this state, which are prohibited by law on account of consanguinity or affinity between the parties or on account of either of them having a former wife or husband, or when either party was insane or an idiot, shall be void, and no decree of divorce or other legal process.

The validity of a marriage shall not be questioned in the collateral issue, on account of the insanity or idiocy of either party in a process duly instituted in the lifetime of both parties, nor in any proceeding for annulling such validity.

The parties to a marriage solemnized when either of them was under age, or of consent, separate during such nonage, and do not

Certain marriages void without decree.  
R. S. 76, § 1.  
1849, 5.  
12 Mass. 303.

Validity of marriage not to be tried upon collateral issue.  
1846, 222.  
4 Allen, 458.

Marriage of parties under age

1873 c. 371  
1874 c. 371



e, and one of them lived in this state

R. S. 76, §§ 9, 10, 11. 226

shall be heard and determined in the county in which, or for two or more parties or one of them live. When either party may take exceptions in the same as in suits at common law.

5 Met. 233.  
Libels for divorce, in what courts to be brought.  
R. S. 76, § 7.  
1851, 82, § 2

not has left the county in which the adverse party still living therein, the libel in the court held for that county.

Same subject.  
R. S. 76, § 8.  
111 Me. 158

libel for divorce, at any time before the trial term, before the jurors are discharged the clerk of the court a demand in the questions of fact arising upon such the direction of the court. In such case acted as nearly as may be in the manner law; and a decree may be entered in

Either party may have trial by jury  
1855, 56, § 2.  
8, 4, 5.  
1857, 255.  
99 Mass. 200.

be signed by the libellant, if of sound mind and memory; otherwise it may be signed by any person admitted by the court as friend of the libellant.

Libel, how to be signed;  
R. S. 76, § 12.  
4 Mass. 505.  
7 Mass. 93.  
18 Mass. 412.  
1 Met. 392.  
8 Allen, 230.  
8 Allen, 311

complaint of is within the state, the clerk of the court in vacation, and answer thereto issued by the clerk and fourteen days at least before the sitting of

how to be filed, and notice served.  
R. S. 76, § 13.  
See 1863, 109.

libel made by delivering to the adverse party a copy of the libel and summons, or by leaving such copy at the adverse party's abode; but the service by leaving a copy shall be deemed sufficient, if it appears that after the same was left, unless it also personal notice of the suit.

Same subject.  
R. S. 76, § 14.  
7 Mass. 502.  
8 Mass. 333.  
See 1862, 90.  
1863, 109.

if the adverse party is within or without the supreme judicial court in any county; summoned to appear and answer at the hearing of the cause, either by a publication of the order with the order of the court thereon

Same subject.  
R. S. 76, §§ 15, 16.  
12 Mass. 312.

in one or more newspapers to be designated in the order, or by delivering to the party an attested copy of the libel and summons, or in such other manner as the court shall consider to be most proper and effectual.

if the adverse party does not appear, and the notice of the libel is considered by the court defective or improper, the court shall order such further notice as it considers proper.

Court may order further notice.  
R. S. 76, § 17.

at any time during the pendency of the suit, the court shall appoint some suitable person as guardian of the adverse party, and answer in like manner as a guardian is appointed for a party in a suit at law.

Guardian for insane respondent.  
R. S. 76, § 19.  
13 Mass. 412.  
13 Gray, 263.

In all cases of libel, the court may require the husband to provide for the use of the wife during the pendency of the suit money as may enable her to maintain or defend the suit, and in every case of libel for adultery, when it is just and equitable, shall be entitled to a decree of pendancy of the suit.

Allowance to wife pending suit.  
1851, 82, § 1.  
1855, 65.  
1855, 137, § 6.  
8 Cush. 406.  
2 Gray, 282.  
6 Gray, 341.

The court, upon granting to a woman a divorce from the husband, may allow her to resume her maiden name, or the name of her husband.

Woman divorced may resume former name.  
1849, 141

Persons divorced from the bond of matrimony cohabit

Penalty for co-

band and wife or live together to all penalties against adultery.

CT. 25. In cases of divorce if a party may marry again as long as age contracted by the guilt; except as provided in the law, the party shall be adjudged guilty.

CT. 26. When a divorce from the cause of adultery, has been granted in any state or territory in the United States, or either of them, upon which the divorce was granted, (in the time of granting the divorce order, may authorize such party to marry again.)

CT. 27. A divorce for adultery, the legitimacy of the issue questioned, shall be tried and determined by common law.

CT. 28. The issue of a marriage, nullity on account of consanguinity, shall be deemed to be illegitimate.

CT. 29. The issue of a marriage, insanity, or idiocy, of either party, shall be the parent's age.

CT. 30. When a marriage is annulled of either party, and it appeared in good faith and with the husband or wife was dead, or divorce or nullity; and the issue is then before the commencement of the legitimate issue of the age.

CT. 31. The supreme judicial court, upon petition of the wife, prohibit on her personal liberty during the trial.

CT. 32. The court may in its discretion, make such order concerning the parties during the trial, as it may deem expedient and for the best interests of the parties.

CT. 33. Upon a decree of nullity, the court may, from time to time, of the parents, revise and alter the same, as the circumstances of the case may require.

CT. 34. After a divorce decree, the children of the marriage shall be under the custody of the supreme judicial court, or its friend in behalf of the children, as the court shall direct, in relation to custody, education, and maintenance in this state.

CT. 35. When the justices of the supreme judicial court, shall have jurisdiction over the custody and maintenance of such children, and such children shall be under five years within its limits.

jurisdiction, against their own consent, if of suitable age to signify the same, nor while under that age, without the consent of both parents, unless the court upon cause shown otherwise orders. The court, upon application of any person in behalf of such infants, may require such security and issue such writs and processes as they shall deem proper to effect the purposes of this and the preceding section.

therefrom except,  
&c.  
1842, 88, § 2.

SECT. 36. Where the parents of minor children live separately, the justices of said court, upon the petition of either parent, shall have the same power to make decrees concerning their care, custody, education, and maintenance, as concerning children whose parents are divorced.

Children of parents living separately.  
R. S. 76, § 28.  
1866, 24.

SECT. 37. In making an order or decree relative to the custody of children pending a controversy between their parents, or in regard to their final possession, the rights of the parents in the absence of misconduct shall be held to be equal, and the happiness and welfare of the children shall determine the custody or possession. The court may make the necessary orders and decrees from time to time in relation to such custody or possession.

Rules as to custody of children.  
1866, 187, § 7.  
10 Allen, 270.

SECT. 38. (R.) [When a divorce is decreed for the cause of adultery committed by the husband, or because of his sentence to confinement at hard labor, the wife shall be entitled to her dower in his lands in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce from the bond of matrimony. A divorce from bed and board shall not bar her claim to dower.]

In what cases wife entitled to dower.  
R. S. 76, § 32.  
13 Mass. 281.  
2 Allen, 45.  
101 Mass. 430.  
(R.) *Repeal and substitute.*  
1870, 404, §§ 4, 5.

SECT. 39. When a divorce is decreed for the cause of adultery committed by the wife, the husband shall hold her personal estate forever, and her real estate so long as they both live; and if he survives her and there has been issue of the marriage born alive, he shall hold her real estate for his own life, as tenant by the curtesy; but the court may decree to the wife, for her subsistence, as much of her personal or real estate, or of the income thereof, as it deems necessary.

Upon divorce for adultery of wife, husband to hold her estate, &c.  
R. S. 76, §§ 33, 34.

SECT. 40. Upon the dissolution of a marriage by a decree of nullity or divorce, for any cause except that of adultery committed by the wife, and upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate in like manner as if her husband were dead; and the court may make a decree restoring to the wife the whole or any part of the personal estate that has come to the husband by reason of the marriage, or awarding to her the value thereof in money to be paid by the husband.

Upon divorce, except for adultery of wife, she shall hold her real estate, &c.  
R. S. 76, §§ 27, 28.  
See 1870, 404, § 5.

SECT. 41. When personal estate of the wife, or money in lieu thereof, is awarded to her under the preceding section, the court in its discretion may order it to be delivered or paid to a trustee appointed by the court, upon trust, to invest the same and apply the income thereof in such manner as the court directs to the support and maintenance of the wife and minor children of the marriage, or any of them; and also to pay over the principal sum to the wife and children, in such proportions and at such times as shall be ordered by the final decree of the court. The trustee shall give such bonds for the faithful performance of his trust as the court shall require.

Court may appoint trustee of property awarded to wife.  
R. S. 76, § 29.

SECT. 42. When the court deems it proper to award to the wife any personal estate, or money in lieu thereof, it may require the husband to disclose on oath what personal estate has come to him by reason of the marriage, and how it has been disposed of, and what portion thereof remains in his hands.

Husband may be examined on oath as to personal estate of wife.  
R. S. 76, § 30.

SECT. 43. Upon every divorce for adultery committed by the husband, or for impotency on his part, or for his uniting with any sect or society that believes or professes to believe the relation between husband and wife void or unlawful, or because of his sentence to confinement at hard labor; and upon every divorce from bed and board, if the estate and effects restored and assigned to the wife are insufficient for

In certain cases wife may be allowed alimony, upon decree of divorce, &c.  
R. S. 76, § 31.  
1844, 129.  
1850, 100, § 8.

1873 & 37167













CHAI

SE  
cedin  
insan  
some  
copy  
regist  
is siti

SE  
may  
was  
her h  
of th  
be de  
petiti

SE  
a con  
is sol  
estate  
posse  
erty c  
Such  
life in  
lawfu  
the n  
conve

SE  
prope  
descri  
wife t  
sched  
after,  
which  
reside  
or dis  
made  
marr  
be rec  
it rela

SE  
count  
her in  
ried w  
transa  
suits,  
here, i  
to be  
acts n  
and e  
other

SE  
count  
and re  
she h  
marr  
togeth



## SECTION

21. Property of minor whose father is living, when applied to his support.
22. Courts may authorize sales of stocks, &c., and investments.
23. By order of S. J. C. guardian may transfer property of ward removing from state.
24. Removal, resignation, and death, of guardian.
25. Marriage of female guardian extinguishes authority.

## SECTION

26. Wards, when and how discharged from guardianship.
27. Sureties may be discharged and new bond required.
28. Bonds may be sued. Proceedings.
29. Action against surety limited, &c.
30. Proceedings for recovering effects concealed, &c.
31. Compensation of guardians.

## GUARDIANS.

[See 1863, 184, § 2; 1864, 212; 1869, 219, 292, 409; 1870, 263; 1871, 97.]

SECTION 1. The probate court in each county, when it appears necessary or convenient, may appoint guardians to minors and others being inhabitants of or residents in the same county, and to such as reside out of this state and have any estate within the same.

Guardians to be appointed by probate court;  
R. S. 79, § 1.

## OF MINORS.

SECT. 2. If a minor is under the age of fourteen years, the probate court may nominate and appoint his guardian. If he is above that age, he may nominate his own guardian, who, if approved by the court, shall be appointed accordingly; if not approved by the court, or if the minor resides without this state, or if after being cited he neglects to nominate a suitable person, the court may nominate and appoint his guardian in the same manner as if he were under the age of fourteen years.

of minors, by whom to be nominated, &c.;  
R. S. 79, § 2.  
2 Doug. 438.  
See Ch. 108,  
§§ 16, 25.

SECT. 3. A minor above the age of fourteen years may nominate his guardian before a justice of the peace or the city or town clerk, who shall certify the fact to the probate court.

same subject;  
R. S. 79, § 3.  
1837, 171, § 2.

SECT. 4. The guardian of a minor shall have the custody and tuition of his ward, and the care and management of all his estate; and unless sooner discharged according to law, shall continue in office until the minor arrives at the age of twenty-one years. But the father of the minor, if living, and in case of his death, the mother, (R.) [*while she remains unmarried*], they being respectively competent to transact their own business, shall be entitled to the custody of the person of the minor and the care of his education.

power and duty of;  
R. S. 79, § 4.

SECT. 5. A father may by his last will in writing appoint guardians for his children, whether born at the time of making the will or afterwards, to continue during the minority of the child or a less time. Such testamentary guardian shall have the same powers and perform the same duties with regard to the person and estate of the ward, as a guardian appointed by the probate court.

(R.) Stricken out by 1871, 118.  
1873 § 367

may be appointed by will of father:  
R. S. 79, § 6.  
8 Met. 127.  
9 Allen, 518.

SECT. 6. The guardian so appointed shall give the bond prescribed in section sixteen, except that when the testator has ordered or requested in his will that a bond be not given, it shall not be required, unless from a change in the situation or circumstances of the guardian or for other sufficient cause the probate court deems it proper to require it.

such to give bond, unless, &c.;  
R. S. 79, § 7.

SECT. 7. Nothing contained in this chapter shall impair or affect the power of any court or justice of the peace to appoint a guardian to defend the interests of a minor impleaded in such court, or interested in a suit or matter there pending; nor their power to appoint or allow any person, as next friend for a minor, to commence, prosecute, or defend, any suit in his behalf.

ad litem, &c., how appointed.  
R. S. 79, § 8.

## OF INSANE PERSONS AND SPENDTHRIFTS.

SECT. 8. When the relations or friends of an insane person, or the mayor and aldermen or selectmen of the city or town of which such

Guardians of insane persons, how appointed.









son having claims thereto in expectancy as heir or otherwise, against any one suspected of having fraudulently received, concealed, embezzled, or conveyed away, any of the money, goods, effects, or other estate, as well real as personal, of the ward, the court may cite and examine such suspected person, although he is the guardian, and proceed with him, as to such charge, in the manner provided respecting persons suspected of fraudulently receiving, concealing, or embezzling, the estate of a deceased person.

SECT. 31. Every guardian shall be allowed his reasonable expenses incurred in the execution of his trust, and shall have such compensation for his services as the court deems just and reasonable.

facts concealed,  
&c.  
R. S. 79, § 27.  
1857, 71, § 2.  
4 Cush. 46.  
See Ch. 96, § 6.  
11 Gray, 210.

Compensation of  
guardians.  
R. S. 79, § 32.

## CHAPTER 110.

### OF THE ADOPTION OF CHILDREN AND CHANGE OF NAMES.

#### ADOPTION OF CHILDREN.

##### SECTION

1. Petition for adoption of a child.
2. Consent thereto must be given by parents, &c.;
3. when either parent is insane, &c.
4. Proceedings if parent does not consent.
5. Consent by child.
6. Proceedings, and decree of adoption.
7. Relation and rights between child and parents by adoption.

##### SECTION

8. Rights of natural parents taken away, &c.
9. Appeals.
10. When decree may be reversed.

#### CHANGE OF NAMES.

11. Change of names, how lawfully made.
12. Notice and certificate.
13. Change of child's name in case of adoption.
14. Returns of changes of names, to be made, &c.

#### ADOPTION OF CHILDREN.

[Repeal and new provisions, 1871, 310; 1872, 311.]

SECTION 1. (R.) [Any inhabitant of this state may petition the probate court in the county of his residence for leave to adopt a child not his own, and, if desired, for a change of the child's name; but the prayer of such petition by a person having a husband or wife shall not be granted unless the husband or wife joins therein.]

Petition for adoption  
of a child.  
1851, 324, §§ 1, 4.  
1854, 24.  
See § 13.

SECT. 2. (R.) [The parents of the child, or the survivor of them, shall, except as herein provided, consent in writing to such adoption. If neither parent is living, the guardian of the child, or if there is no guardian, the next of kin in this state, may give such consent; or if there is no next of kin, the court may appoint some suitable person to act in the proceedings as next friend of the child, and to give or withhold such consent.]

Consent thereto  
must be given by  
parents, &c.;  
1851, 324, § 2.  
1852, 262.  
1853, 31.

SECT. 3. (R.) [If either parent is insane, or imprisoned in the state prison or a house of correction under a sentence for a term not less than three years, or has wilfully deserted and neglected to provide proper care and maintenance for the child, for one year next preceding the time of filing the petition, the court shall proceed as if such parent were dead, and in its discretion may appoint some suitable person to act in the proceedings as next friend of the child, and give or withhold the consent aforesaid.]

when either  
parent is insane,  
&c.  
1853, 402.  
1859, 61, § 1.

SECT. 4. (R.) [If a parent does not consent to the adoption of his child, the court shall order a copy of the petition and order thereon to be served on him personally, if found in the state, and if not, to be published once a week for three successive weeks, in such newspaper printed in the county as the court directs, the last publication to be at least four

Proceedings if  
parent does not  
consent.  
1859, 61, § 2.  
10 Allen, 278.

112 m. 184  
1876-21351

1876-21351



Returns of  
 changes of  
 names to be  
 made, &c.  
 1851, 256, § 4.  
 See Ch. 8, § 1.

[See 1865, 270.]

## Summary

- ## SECTION

- Minors may be bound as apprentices or servants;  
R. S. 80, § 1.

how bound  
when under  
fourteen years;  
R. S. 78, §§ 4,  
5, 6.  
R. S. 80, § 2.  
2 Mass. 109, 387,  
438.

when above  
fourteen ;  
R. S. 80, \$ 8.  
5 Cush. 417.

overseers of  
poor may bind;  
R. S. 80, § 6.  
7 Greenl. 457.  
4 N. H. R. 180.

until what  
age, and upon  
what terms.  
R. S. 80, § 7.  
5 Pick. 250.

SECT. 6. No minor shall be so bound unless by an indenture of two Indenture to be



SECT. 16. No such action shall be maintained, unless commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

Limitation of action by apprentice.  
R. S. 80, § 17.

SECT. 17. If judgment in such action is rendered for the plaintiff, the court may upon motion of the plaintiff discharge the minor from his apprenticeship or service, if not already done as before provided, and the minor may be bound out anew.

If judgment for plaintiff, court may discharge apprentice.  
R. S. 80, § 18.

SECT. 18. (R.) [If an apprentice or servant, bound as aforesaid, unlawfully departs from the service of his master, any police court or justice of the peace, upon complaint on oath made by the master or any one in his behalf, may issue a warrant to apprehend the apprentice or servant and bring him before the court or justice. If the complaint is supported, the court or justice may order the offender to be returned to his master, or commit him to the jail or house of correction for a term not exceeding twenty days, unless sooner discharged by his master.]

Apprentice absconding may be arrested, and returned or imprisoned.  
R. S. 80, § 19.  
(R.) Repealed 1866, 270, § 8.

SECT. 19. (R.) [The warrant when directed to an officer or other person by name, shall authorize him to convey the offender to the place of residence of the master in any county in the state.]

Proceedings in such case.  
R. S. 80, § 20.  
(R.) Repealed 1866, 270, § 8.

SECT. 20. (R.) [All costs incurred in such process against a servant or apprentice, shall be paid in the first instance by the complainant. If the complaint is supported, the costs may be recovered by the master in an action on the indenture, if executed by a parent or guardian, and if recovered against a guardian, he may charge the amount paid by him in his guardianship account. If the indenture was executed by overseers of the poor, or the minor with the approbation of the selectmen, the costs may be recovered in an action against the minor after he arrives at full age.]

Costs therein, of whom recoverable.  
R. S. 80, § 21.  
(R.) Repealed 1866, 270, § 8.

SECT. 21. No indenture of apprenticeship or service made in pursuance of this chapter shall bind the minor after the death of his master, but the apprenticeship or service shall be thenceforth discharged, and the minor may be bound out anew.

Apprenticeship discharged by death of master.  
R. S. 80, § 24.

SECT. 22. All the foregoing provisions shall apply as well to mistresses as to masters.

Mistresses.  
R. S. 80, § 25.

SECT. 23. Nothing contained in this chapter shall affect the father's right at common law to assign or contract for the services of his children during their minority.

Common law right.  
R. S. 80, § 26.  
1 Mason, 78.

3 Johns. R. 323. 3 B. & A. 536. 1 Ashm. 267. 9 Gray, 377. 7 Mass. 147. 96 Mass. 137.

SECT. 24. Every thing prescribed in this chapter to be done by the selectmen of a town, shall and may be done by the mayor and aldermen of a city; and every thing prescribed to be done by the overseers of the poor of a town, shall and may be done by the overseers of the poor of a city, or the directors of the house of industry, or such other officers as have charge of the poor therein.

Powers and duties, in whom vested in cities.  
R. S. 80, § 27.



SECTION

26. Law term of court for the commonwealth. What questions entered and determined therein.
27. Law terms for other counties, where and when held. Law terms to be terms for return of process, &c. But no jury to be summoned unless, &c.
28. Jury terms, when and where held.
29. Writs, &c., to be sued out of clerk's office in county, &c., and returnable to full court.
30. Suits, &c., arising in Dukes County, to be tried, &c., in Barnstable.
31. Judgments, how entered in actions continued nisi.
32. Liability of security to be computed from time of such entry.

SECTION

33. Questions of law, how to be entered.
34. At law term in Boston, questions of law to be in order for argument within five days after entry.
35. Questions on appeals, &c., in superior court in criminal cases, how entered, &c.;
36. when to be in order, &c., for argument.
37. Questions may be heard *ex parte*, when, &c.; or passed upon without argument, or postponed.
38. Construction of "the court."
39. Court for the commonwealth to audit accounts, &c.
40. Salaries of justices.
41. Compensation of officers.

SECTION 1. There shall be one chief justice, and five associate justices of the supreme judicial court.

SECT. 2. Four justices shall constitute a quorum to decide all matters requiring to be heard by a court of law.

SECT. 3. The court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein, where no other remedy is expressly provided, and may issue writs of error, certiorari, mandamus, prohibition, quo warranto, and all other writs and processes to courts of inferior jurisdiction, corporations, and individuals, necessary to the furtherance of justice and the regular execution of the laws.

SECT. 4. A majority of the justices may remove from office the clerks of the courts or of their own court, when in their judgment the public good requires such removal; and on bill, petition, or other process, a majority of them may remove any clerk of the superior court or of a police court, any commissioner of insolvency, sheriff, register of probate and insolvency, or district-attorney, if sufficient cause is shown therefor and it appears that the public good requires it; and a summary hearing may be had upon bill, petition, or other process, in term time or vacation.

SECT. 5. Trials of indictments for capital crimes; questions of law on exceptions, on appeals from the superior court, on cases stated by the parties, and on special verdicts; and all issues in law, shall be heard and determined by the full court.

SECT. 6. The court shall have original and exclusive jurisdiction of petitions for divorce and nullity of marriage, and original and concurrent jurisdiction with the superior court, of petitions for partition and writs of entry for foreclosure of mortgages, and of civil actions in which the damages demanded or property claimed exceed in amount or value four thousand dollars if brought in the county of Suffolk, and one thousand dollars if brought in any other county, if the plaintiff, or some one in his behalf, before service of the writ, makes oath or affirmation before some justice of the peace that he verily believes the matter sought to be recovered actually equals in amount or value said sums respectively; a certificate of which oath or affirmation shall be indorsed on or annexed to the writ.

SECT. 7. The court shall have jurisdiction of all actions and proceedings at law, made returnable to the superior court and removed to the supreme judicial court or transmitted to it under the provisions of chapter one hundred and fourteen.

SECT. 8. A person indicted for a capital crime may be arraigned before the court held by one justice, and if he pleads guilty, such court may award sentence against him according to law.

SECT. 9. If the prisoner in such case does not plead guilty, the court may assign him counsel and take all other measures preparatory to a

Number of justices. *1873 = 140*  
1862, 127, § 1.

Quorum in court of law.  
R. S. 81, § 11.  
General superintendence of inferior courts.  
May issue writs of error, &c.  
R. S. 81, §§ 4, 5.  
1859, 196, § 38.  
10 Met. 217.  
8 Cush. 214.

Majority of justices may remove certain officers.  
1856, 178, § 7.  
1858, 98.  
1 Allen, 258.

*Amended 1876-209*

Trials, &c., by full court.  
R. S. 81, § 18.  
R. S. 136, § 22.  
1859, 196.

Jurisdiction, general.  
R. S. 78, § 7.  
1840, 87, § 1.  
1842, 14, § 1.  
1851, 82, § 2.  
1852, 51, §§ 1, 2.  
1859, 196, § 30.  
6 Met. 270.  
7 Met. 43.  
11 Met. 293.  
2 Cush. 494.  
5 Cush. 534.  
See Ch. 156, §§ 5, 7.  
13 Gray, 536.  
99 Mass. 463.

of actions removed from superior court.  
1859, 196.

What justice may do in capital case.  
R. S. 81, § 15.  
R. S. 136, § 21.

Single justice may assign





court, the adverse party may enter a complaint and have the judgment, opinion, ruling, or order, affirmed. 10 Gray, 375. 1 Allen, 401. 103 Mass. 533.

SECT. 17. If by mistake or accident a question arising upon an appeal, or upon exceptions in the superior court, is not duly entered in the supreme judicial court, or if, for a like reason, a complaint founded on an omission to enter such question has not been entered by the adverse party, the court, upon petition filed within one year after the question or complaint should have been entered, and upon such terms as it deems just and reasonable, may allow the party taking the appeal or exception to enter the question, or the adverse party to enter his complaint, as the case may be; and when so entered the court shall proceed therein as if it had been entered, at the proper term. But no security by bond, attachment, or otherwise, discharged by the omission of either party to enter the question or complaint, shall be revived and continued in force by the entry of such question or complaint.

SECT. 18. Four or more justices present at a jury term shall have and exercise the powers of a full court; a single justice present at a law term shall have and exercise the same authority as at a jury term.

SECT. 19. If an indictment for a capital offence is pending and for trial in a county in which there is no law term established, the justices shall hold a session in such county for the trial thereof.

SECT. 20. The chief justice upon receiving notice of the pendency of such an indictment shall take measures for convening a quorum of the justices for the trial at the stated term of the court in the county, or at an adjournment of such term; which trial shall be had as soon after the finding of the indictment as the other official duties of the justices admit, and the circumstances of the case require.

SECT. 21. If a session of the court is not to be held in the county within six months after the finding of the indictment, a special term may be held for the purpose by the full court at such time and place as a majority of the justices may, by an order in writing under their hands, directed to the sheriff of the county, determine.

SECT. 22. The sheriff shall give notice of the intended special term, by posting a copy of the order on the door of the court house, or by publishing the same in such other manner as therein directed; and the clerk for the county shall issue venire for jurors, and he and all other officers shall do all things necessary or proper in relation to such term, as at a stated term.

SECT. 23. The court assembled at such special term shall have and exercise the same powers as at a stated term, except that no party in any civil action pending in the court shall be required to attend at such terms, be defaulted or suffer any other penalty for not attending thereat.

SECT. 24. An indictment for a capital offence found in the county of Dukes County, shall be tried at a court to be held in the county of Barnstable; and the court for that purpose shall be convened and held and all the proceedings in relation thereto conducted as when held in the county where an indictment is found.

SECT. 25. If a special term is required to be held in the county of Barnstable for the trial of an indictment found in the county of Dukes County, a written order shall be sent to the sheriff of each of said counties, and each of them required to do in his county whatever is necessary or proper in relation to such term.

SECT. 26. A law term of the court for the commonwealth shall be held at Boston on the first Wednesday of January of each year, which may be adjourned from time to time to places and times most conducive to the despatch of business and the interests of the public; and there shall be entered and determined therein questions of law arising in the counties of Barnstable, Bristol, Dukes County, Essex, Middlesex, Nan-

party may enter complaint, &c.  
R. S. 82, § 10.  
3 Cush. 57.  
Entry of appeal omitted, &c., may be allowed on petition. No security to be revived thereby.  
R. S. 81, §§ 34, 35, 36.  
1869, 196.  
4 Met. 371.  
5 Cush. 501.  
1 Allen, 486.

117 m. 279

Powers of justices at jury and law terms.  
R. S. 81, § 28.  
1869, 196, § 39.  
5 Cush. 496.  
Capital trials, where there is no law term.  
R. S. 81, § 41.  
1869, 196, 232.  
See 1871, 240.

Court, how to be convened.  
R. S. 81, § 42.  
1869, 196, 232.  
See 1869, 433.  
1871, 240.  
1872, 232.

Special term, when held for that purpose?  
R. S. 81, § 43.  
1869, 196, 232.

how notified, &c. Proceedings thereat.  
R. S. 81, § 44.  
1869, 196, 232.

What business may be transacted at such term.  
R. S. 81, § 45.  
1869, 196, 232.

Capital indictments in Dukes to be tried in Barnstable.  
R. S. 81, § 46.  
1869, 196, 232.

Special term in such case.  
R. S. 81, § 47.  
1869, 196, 232.

Law terms.  
1869, 196, § 33.  
5 Cush. 494.  
103 Mass. 535.  
See 1861, 206.  
1862, 215.  
1870, 351.

Law terms.  
1869, 196, § 86.

Berkshire.  
See 1861, 99.  
1868, 326.  
Franklin.  
See 1861, 99.

Hampden.

Hampshire.  
See 1861, 99.

Worcester.

Law terms to be  
terms for return  
of process, &c.  
But no jury to  
be summoned  
unless, &c.  
5 Cush. 466.  
18 Gray, 268.

Jury terms,  
when and where  
held.  
R. 8. 81, §§ 12,  
59.  
1869, 196, § 56.  
Barnstable and  
Dukes.

Berkshire.  
See 1868, 326.

Bristol.  
See 1860, 210.  
1861, 206, § 2.

Essex.  
See 1860, 210.  
Franklin.  
See 1860, 57, § 1.  
Hampden.

Hampshire.

Middlesex.  
See 1860, 57, § 2.  
1860, 210.  
Nantucket.

Norfolk.

Plymouth.  
See 1860, 57, § 2.  
1862, 215, §§ 1, 2.  
Suffolk.  
See 1871, 168.

Worcester.  
1869, 274.

Writs, &c., to  
be sued out of  
clerk's office in  
county, &c., and  
returnable to  
full court.  
R. 8. 81, § 68.

tucket, Norfolk, Plymouth, and Suffolk; and also all questions of law arising in other counties where special provisions are not made therefor.

SECT. 27. For entering and hearing questions of law arising in the following counties, law terms shall be held as follows:—

For the county of Berkshire, at Lenox, on the first Tuesday of September.

For the county of Franklin, at Greenfield, on the first Monday after the first Tuesday of September:

For the county of Hampden, at Springfield, on the third Monday after the first Tuesday of September:

For the county of Hampshire, at Northampton, on the second Monday after the first Tuesday of September:

For the county of Worcester, at Worcester, on the fourth Tuesday after the first Tuesday of September:

These terms shall be taken to be terms for the return of process, entry of appeals, trials, and for all purposes for which a court may be held by a single justice in the county in which the court is held; but no jury shall be summoned for such terms unless an order therefor shall be issued by the justices of said court, or one of them, directed to the clerk of said county. Cases which may have arisen or which may be pending in the counties of Berkshire and Franklin, when the provisions of this chapter take effect, shall have day and be cognizable in said counties respectively at the aforesaid terms: persons, processes, and matters, shall be held and answerable accordingly.

SECT. 28. Jury terms of the court shall be held by a single justice every year at the times and places following, and the presiding judge thereat shall have and exercise all the powers not expressly reserved to the full court:—

For the county of Barnstable and Dukes County, at Barnstable, on the first Tuesday of May:

For the county of Berkshire, at Lenox, on the second Tuesday of May:

For the county of Bristol, in alternate years at New Bedford and Taunton, beginning at New Bedford on the second Tuesday of November:

For the county of Essex, at Salem, on the third Tuesday of April:

For the county of Franklin, at Greenfield, on the second Tuesday of April:

For the county of Hampden, at Springfield, on the fourth Tuesday of April:

For the county of Hampshire, at Northampton, on the third Tuesday of April:

For the county of Middlesex, at Lowell, on the third Tuesday of April:

For the county of Nantucket, at Nantucket, on the first Tuesday of July:

For the county of Norfolk, at Dedham, on the third Tuesday of February:

For the county of Plymouth, at Plymouth, on the second Tuesday of May:

For the county of Suffolk, at Boston, on the first Tuesdays of October and April:

For the county of Worcester, at Worcester, on the second Tuesday of April:

SECT. 29. Writs and processes in suits cognizable by the full court, except original writs ordered by the court, shall be sued out of the clerk's office of the county in which the matter is pending, and be returnable to the full court.

SECT. 30. Any suit, matter, or thing, arising or pending in the county

of Dukes County cognizable by the supreme judicial court and to be heard before a single justice, shall be entered, heard, tried, and determined, at the court held in the county of Barnstable, in all respects as if the same court were held in the county of Dukes County; and all matters cognizable by the full court, arising or pending in the county of Dukes County, shall be heard and determined as if arising in the county of Barnstable.

SECT. 31. If an action is continued nisi from any term, either for argument or advisement, and is determined by the court before the next term in the same county, the judgment, by order of the court on the motion or at the request of the party prevailing, may be entered as of the then last term of the court in the county where the action is pending, whether it be a law term or not. If the action is pending in the superior court the rescript may direct the clerk to enter judgment as of the last term in that court.

SECT. 32. The clerk in such case shall note on his docket the time of receiving such order, and when the order is for final judgment in favor of the plaintiff, the security in the suit, whether by bail or otherwise, shall be held for the same time thereafter that it would be held after the entry of judgment in the usual manner.

SECT. 33. All questions of law arising at the same term in each county, excepting the counties mentioned in section twenty-seven, shall be entered in their order in the court, and in the order of time, as nearly as may be, of the final adjournment of the terms at which the questions arise; and if any special proceeding comes before the court from any county requiring entry, it shall be entered, with the questions from such county which are entered nearest the day of the inception of such proceeding, and all entries shall be made forthwith upon receipt of the papers. And questions of law arising in the superior court in said counties shall be entered with the questions of law pending in the supreme judicial court for such counties respectively; and the clerks of the courts for said counties shall prepare the proper papers for their respective counties.

SECT. 34. At the law term held in Boston, all questions of law shall be in order for argument within five days after their entry upon the docket of the full court, and be argued when reached, in their order, by either party ready to do so, unless the court, for good cause shown, postpones the same.

SECT. 35. Questions arising upon appeals and exceptions in the superior court in criminal cases, and all processes and other proceedings in such cases, which may lawfully come before the court at the law term aforesaid, shall be entered upon the criminal docket, and be proceeded in and determined, and such judgment, order, or decision, made, as to law shall appertain. And such rescript, writ, or process, shall be issued thereon as the case may require.

SECT. 36. At any time after five days from the entry thereof, all such criminal cases shall be in order and have precedence for argument on such day in every month in which the court shall be in session, as the court may designate; and the arguments shall be continued till such cases are disposed of, and shall not be postponed except for special cause shown.

SECT. 37. The court may hear any question ex parte when it is reached in the order of the docket and only one party is ready for argument; or if neither party is ready, the exceptions may be passed upon by the court without argument, or the case may be postponed when any special reason exists therefor; but no case that has been postponed shall be again in order for argument until all the questions ready for argument have been argued, postponed, or otherwise disposed of.

SECT. 38. If no designation is made, the words "the court" may be

Suits, &c., arising in Dukes County to be tried, &c., in Barnstable. R. S. 81, § 64.

Judgments, how entered in actions continued nisi. R. S. 81, § 57. 7 Gray, 326.

Liability of security to be computed from time of such entry. R. S. 81, § 58.

Questions of law, how to be entered. 1859, 196, § 44. 1 Allen, 401, 436. 103 Mass. 636. See 1869, 428.

In Boston, questions of law to be in order for argument in five days after entry. 1859, 196, § 45. See 1864, 111, § 1.

Questions on appeals, &c., in superior court in criminal cases, how entered, &c.; 12 Allen, 206. 103 Mass. 428.

when to be in order, &c., for argument. 1859, 196, § 46.

Questions may be heard ex parte, when, &c.; or passed upon without argument, or postponed. 1859, 196, § 47.

Construction of "the court."

Court for the  
commonwealth  
to audit ac-  
counts, &c.

Salaries.  
Decl. of Rights.  
Art. 29. R. S.  
81, § 81. 1866, 10.  
See Ch. 15, § 38.  
See 1872, 180.

Compensation of  
officers.  
1868, 104.

construed to mean the full court or a court held by one justice, as the context or subject matter may require.

SECT. 39. The full court sitting at Boston for the commonwealth shall examine and audit all accounts for services and expenses incident to said court, to be paid by the commonwealth.

SECT. 40. The chief justice of the court shall receive an annual salary of four thousand five hundred dollars, and each of the other justices an annual salary of four thousand dollars, from the treasury of the commonwealth.

SECT. 41. Officers, except deputy-sheriffs, attending upon the court, shall receive compensation therefor as the court may allow, not exceeding three dollars a day.

## CHAPTER 113.

[See Chap. 12, § 42; 1861, 174, § 2; 1862, 181; 1865, 42; 1866, 264, § 2; 1869, 331.]

### OF THE SUPREME JUDICIAL COURT — EQUITY JURISDICTION.

#### SECTION

1. Jurisdiction in equity;
2. special and general.  
Redemption of mortgages.  
Trusts.  
Specific performance.  
Redelivery, &c.  
Contribution between devisees.  
More than two parties having distinct rights,  
&c.  
Copartners, &c.  
Trustees, &c.  
Waste and nuisance.  
Accounts.  
Creditor's bills.  
Fraud, &c.  
Accident or mistake.  
Discovery.  
Full equity powers.
3. Cases in equity, how commenced, &c.
4. Discovery, how sought. Answer.
5. Defence by demurrer, answer, &c.
6. Cases first heard by single justice.
7. Court always open for hearings, &c. Rule days.
8. Final decree, appeal from. Proceedings.
9. Justice may appoint receivers, &c., until heard by full court.

#### SECTION

10. Interlocutory decrees, appeal from, not to transfer entire cause;
11. not appealed from, open to revision;
12. affecting merits, &c., question may be reported to court of law.
13. Appeal, not claimed in time, allowed on petition;
14. to be entered on separate docket.
15. Justice may reserve questions for full court.
16. Decree, &c., to bear date of entry.
17. Execution on final decree not to issue for thirty days, unless, &c.
18. Court may hear cases pending in another county. Decrees, &c., to be transmitted.
19. Notice to adverse party in such case.
20. Motion, &c., may be argued in writing.
21. Upon appeal, testimony to be reported to full court. Rules therefor. Further evidence allowed in special cases.
22. Court may frame issues for jury, when, &c.,
23. may issue writs, &c., to enforce decrees.
24. Justice to hear cases at all times in Boston.
25. Counsel may take papers from files upon leaving receipt.
26. Court may make rules regulating practice, &c.

Jurisdiction in  
equity; original  
and exclusive;  
R. S. 81, §§ 4, 5,  
9  
9 Cush. 214.  
8 Cush. 529.

special and  
general.

R. S. 81, § 8.  
12 Met. 318.

Redemption of  
mortgages.

Trusts.  
20 Pick. 368, 372.  
22 Pick. 55.  
13 Pick. 148.  
13 Met. 210.  
9 Cush. 127.

SECTION 1. In addition to the jurisdiction in equity conferred, the supreme judicial court shall have original jurisdiction of every original process, whether by bill otherwise, in which relief in equity is prayed for, except provision is made; and may issue all general and processes required in proceedings in equity to court of law, corporations and individuals, when necessary and equity.

SECT. 2. The court may hear and determine hereafter mentioned, when the parties have not a complete remedy at the common law; that is to say,

Suits for the redemption of mortgages, or to foreclose

22 Pick. 536.

2 Gray, 190.

5 Gray,

Suits and proceedings for enforcing and regulating trusts, whether the trusts relate to real or personal es-

1 Gray, 220. 3 Gray, 230. 5 Gray, 341. 10 Gray, 162. 3 Allen, 121. 10 A

1154. 44

253

11/14. 22

Suits for the specific performance of written contracts by and against either party to the contract, and his heirs, devisees, executors, administrators, and assigns:

10 Gray, 384. 12 Gray, 197. 14 Gray, 511. 6 Gray, 25. 7 Gray, 533. 8 Gray, 542.

Suits to compel the redelivery of goods or chattels taken or detained from the owner, and secreted or withheld so that the same cannot be replevied:

5 Met. 525. 7 Cush. 530. 16 Gray, 219. 5 Allen, 61.

Suits for contribution by or between devisees, legatees, or heirs, who are liable for the debts of a deceased testator or intestate, and by or between any other persons respectively liable for the same debt or demand, when there is more than one person liable at the same time for such contribution:

Other cases in which there are more than two parties having distinct rights or interests, which cannot be justly and definitely decided and adjusted in one action at the common law:

15 Gray, 5. 5 Allen, 379. 100 Mass. 355. 105 Mass. 549. 106 Mass. 50.

Suits between copartners, joint tenants, and tenants in common, and their legal representatives, with authority to appoint receivers of rents and profits, and apportion and distribute the same to the discharge of encumbrances and liens on the estates, or among the co-tenants:

Suits between joint trustees, co-executors, and co-administrators, and their legal representatives:

Suits concerning waste and nuisance, whether relating to real or personal estate:

6 Pick. 376. 13 Pick. 179. 5 Met. 140. 12 Cush. 456. 4 Gray, 324.

Suits upon accounts when the nature of the account is such that it cannot be conveniently and properly adjusted and settled in an action at law:

7 Cush. 449.

Bills by creditors to reach and apply, in payment of a debt, any property, right, title, or interest, legal or equitable, of a debtor, within this state, which cannot be come at to be attached or taken on execution in a suit at law against such debtor:

5 Allen, 372. 7 Allen, 258. 99 Mass. 277. 100 Mass. 396. 104 Mass. 275. 105 Mass. 423.

Cases of fraud, and conveyances or transfers of real estate in the nature of mortgages:

10 Met. 101. 1 Cush. 222. 7 Gray, 144. 6 Allen, 53. 9 Allen, 75.

Cases of accident or mistake:

1856, 38, § 1. 5 Met. 274. 13 Gray, 373.

Suits or bills for discovery when a discovery may be lawfully required according to the course of proceedings in equity:

And shall have full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate, and complete remedy at law.

102 Mass. 27. 104 Mass. 244.

SECT. 3. Cases in equity may be commenced by bill or petition with a writ of subpoena according to the usual course of proceedings in equity, or inserted in an original writ of summons or of summons and attachment, or by a declaration in an action of contract or tort, as the case may be, with or without an order for the attachment of the property or arrest of the defendant; and shall be returnable at the terms of the court as established in the several counties or on the rule days established by the court. The material facts and circumstances relied on shall be stated with brevity, omitting immaterial and irrelevant matters.

13 Gray, 5, 537. 1 Allen, 572.

SECT. 4. If a discovery is sought, it may be by such bill or petition, or by being made part of such declaration, or by interrogatories. Answers thereto shall be made without unnecessary delay, and questions arising thereon be determined by the rules applicable to bills of discovery.

SECT. 5. A defence in equity shall be made by demurrer, plea, or answer. A demurrer shall be accompanied with a certificate that it is not intended for delay; and an answer shall be supported by oath, unless waived by the adverse party.

SECT. 6. Cases in equity, and motions and other applications therein, whether interlocutory or final, shall in the first instance be heard and determined by one justice of the supreme judicial court.

Specific performance.

R. S. 74, §§ 8-17.

4 Cush. 532.

9 Cush. 10.

Redelivery, &c.

20 Pick. 28.

23 Pick. 223.

2 Met. 127.

Contribution between devisees, &c.

More than two parties having distinct rights, &c. 6 Met. 425.

Copartners, &c.

R. S. 70, § 35.

4 Met. 540.

7 Cush. 365.

10 Gray, 15.

8 Allen, 368.

101 Mass. 511.

See Ch. 136,

§§ 77, 78.

Trustees, &c.

Waste and nuisance.

R. S. 105, § 14.

Accounts.

R. S. 118, § 43.

5 Met. 7.

1 Cush. 82.

Creditor's bills.

1851, 206, § 1.

1853, 34.

8 Gray, 199.

12 Gray, 335.

13 Gray, 305.

1 Allen, 568.

Fraud, &c.

1855, 194, § 1.

Accident, &c.

Discovery.

10 Met. 101.

Full equity powers.

1867, 214.

11 Gray, 119.

5 Allen, 59.

Cases in equity, how commenced, &c.

R. S. 90, § 117.

R. S. 107, § 22.

1853, 371, §§ 1, 2.

1855, 194, § 2.

1856, 38, § 2.

4 Met. 563.

5 Gray, 71, 360.

See Ch. 123,

§§ 18, 20, 31.

Ch. 140, § 24.

12 Gray, 556.

Discovery, how sought.

Answers.

1855, 194, § 8.

Defence by demurrer, answer, &c.

1855, 194, § 4.

9 Allen, 101.

Cases first heard by single justice.

1859, 237, § 1.

110 m. 57

110 m. 32

109 m. 383

115 m. 45

1875-2 35

111 m. 307

**SUPREME JUDICIAL**

**SECT. 7.** For hearings, and making and decrees in equity causes, by such causes, the court shall be always holidays established by law. And for the transaction of the business equity.

SECT. 8. From final decrees in  
grieved may, within thirty days af-  
to be entered on the clerk's dock  
under such decree shall be stayed,  
ing before the full court, who shall  
affirm, reverse, or modify, the deci-  
may require. On the reversal of  
mand the cause, with such directio  
single justice, further to proceed th  
take such other order respecting f  
requires, and as shall be most cond  
nation of the case.

SECT. 9. If an appeal is taken from a decree made by a court of equity, in which the decree is made in favor of the plaintiff, the court may, in its discretion, appoint receivers, and make such other orders, as may be necessary for the execution of the decree, and the same shall be in force, as are needful for the parties, until the appeal is heard by the court of appeals, and may be modified or annulled, by the court of appeals, after the appeal is taken.

SECT. 10. From all interlocutory orders any party aggrieved may appeal, in which such appeal shall not suspend the execution of justice, nor transfer to the full court the cause therein, except the question whether the order made from, shall be affirmed, reversed, or

**SECT. 11.** All interlocutory decrees subject to revision on appeals from final decrees of full court that such final decrees are

SECT. 12. If upon making an affidavit, justice is of opinion that it so appears that the matter ought to be determined, and that further proceedings are had, he may stay all further proceedings except the rights of the parties.

**SECT. 13.** A party having by a final decree, an appeal from any final decree, who may, at any time within one year from the date of the decree, from which he desires to appeal, a leave to appeal; which may be granted by the court just and equitable.

**SECT. 14.** All appeals in equity on a separate docket in the supreme

**SECT. 15.** The justice by whom the evidence is taken shall reserve and report the evidence and the reasons thereon for the consideration of the full court; and he shall have as in appeals from final decrees.

SECT. 16. Every order and decree shall be entered upon the order or decree and upon the day of entering the same.

SECT. 17. No process for the  
single justice, shall issue until aft  
date of the entry thereof, unless a

made waive an appeal by an entry on the clerk's docket, or by a writing filed in the cause. 1859, 237, § 9.

SECT. 18. A single justice or the full court, sitting in one county, may when needful hear and determine cases pending in another county, and any motion therein. And all orders and decrees made on such hearings shall be transmitted to the clerk in the proper county, to be by him entered.

SECT. 19. A motion shall not be heard nor a decree or order made under the preceding section, until reasonable notice thereof has been given to the adverse party or his council.

SECT. 20. Either party in such case may transmit to the court his reasons in writing for or against the application, and the justice shall examine the same and proceed thereon as if the parties were present.

SECT. 21. The testimony of witnesses examined orally before a single justice, upon any matter pending before him, in which an appeal is taken, shall be reported to the full court. And the court shall provide by general rules for some convenient and effectual means of having the same reported, by the justice before whom the hearing is had, or by some person designated by him for that purpose. No oral evidence shall be exhibited to the full court, but the cause be heard, on appeal, upon the same evidence as on the original hearing; but the full court may grant leave to parties, in special cases of accident or mistake, to exhibit further evidence, and may provide by general rules, or special order, for the conditions under, and modes by which, such evidence shall be taken.

SECT. 22. The court may frame issues of fact to be tried by a jury, in an equity cause, when requested by a party, and direct the same to be tried in the county where such cause is pending, at the bar of the supreme judicial court, or the superior court. 16 Gray, 409. 106 Mass. 255.

SECT. 23. The court may issue writs of seisin and execution in common form when such process appears to be an appropriate method of enforcing a decree in equity. 106 Mass. 500.

SECT. 24. The justices of the court shall, from time to time, by arrangement among themselves, designate some one of their number to attend at some convenient place in Boston, at all convenient times, for the purpose of hearing matters in equity, who by his rescript may make decrees and orders in equity suits in any county.

SECT. 25. The original papers, in any suit in equity, may be taken from the files in any county by the counsel of record of either party, for use before the court, upon leaving a memorandum and receipt on such files, containing a short description of the papers so taken.

SECT. 26. The court may make rules regulating the practice and conducting the business of the court in matters of equity, so as to simplify the proceedings, discourage delays, lessen the expenses and burdens of litigation, and expedite the decision of causes.

Court may hear cases pending in another county. Decrees, &c., to be transmitted. R. S. 81, § 24. 1859, 237, § 7. 5 Allen, 81.

Notice to adverse party in such case. R. S. 81, § 22.

Motion, &c., may be argued in writing. R. S. 81, § 23.

Upon appeal, testimony to be reported to full court. Rules therefor. 1859, 237, § 8. See Ch. 181, § 60. 13 Allen, 207. 98 Mass. 467.

Further evidence allowed in special cases. 115 M. 339.

Court may frame issues for jury, when, &c.; 1859, 237, § 13. 6 Pick. 376.

may issue writs, &c., to enforce decree. R. S. 74, § 12. R. S. 118, § 43.

Justice to hear equity cases at all times in Boston. 1859, 196, § 50.

Counsel may take papers from files upon leaving receipt. 1859, 196, § 50.

Court may make rules regulating practice, &c. 1859, 196, § 49. 13 Allen, 200. For rules see 14 Gray, 351.

116 M. 230  
117 M. 403

1874, 339 & 3

1874, 339 & 4

## CHAPTER 114.

[See 1863, 33; 1869, 438; 1870, 290, 312.]

### OF THE SUPERIOR COURT.

#### SECTION

1. Number of justices.
2. Court may be held by one or more justices.
3. Exclusive original and original jurisdiction.
4. Original and concurrent jurisdiction.

#### SECTION

5. Appellate civil jurisdiction.
6. Criminal jurisdiction, original, and appellate.
7. Removal of actions to S. J. C. by consent; to be entered at next term.

## SECTION

8. Removal of actions to S. J. C. upon affidavit.
9. Debt or damage to exceed twenty dollars.
10. Appeals allowed from judgments on matters of law except, &c.; practice thereon.
11. Upon appeal, &c., security to be held until final judgment.
12. Decrees of S. J. C. in cases in superior court to be entered of record.
13. Judgment may be final by agreement.
14. Clerk to transmit copies to S. J. C. at expense of appellant, &c. Original papers in case, &c.

## SECTION

15. Entry of appeal, &c., omitted, allowed on petition. No security revived thereby.
16. Courts, when and where held.
17. Civil and criminal business to be transacted at respective terms therefor.
18. Suits on recognizances in criminal matters.
19. No justice to hold more than four criminal terms a year.
20. Certain actions to have precedence.
21. Records transferred, custody of, &c.
22. Salaries of justices.

ten add-judices.

1875-230

Number of justices.

1869, 196, § 7.

Court may be held by one or more justices.

R. S. 82, § 82.

1869, 196.

Jurisdiction.

R. S. 82, § 2.

1840, 87, § 2.

1869, 196.

6 Allen, 398.

10 Allen, 420.

Original and concurrent jurisdiction.

R. S. 82, § 2.

R. S. 85, § 1, 2.

R. S. 113, § 17,

27, 29.

1840, 87, § 1.

1842, 14, § 1.

1862, 812, § 1, 2.

1862, 814, § 1.

1869, 196.

2 Cush. 86, 494.

See Ch. 156, § 5.

Appellate civil jurisdiction.

R. S. 82, § 8.

1869, 196, § 5.

Criminal jurisdiction, original and appellate.

R. S. 82, § 25.

1869, 196.

Removal of actions to S. J. C. by consent:

to be entered at next term;

1844, 182.

1869, 196, § 80.

1 Gray, 108.

See Ch. 156, § 7.

10 Allen, 420.

upon affidavit.

1840, 87, § 3.

1842, 14, § 1.

1862, 812, § 82.

1869, 196, § 30.

7 Met 415, 670.

2 Cush. 356.

5 Cush. 501.

11 Cush. 87.

8 Gray, 377.

12 Gray, 225.

4 Allen, 67.

10 Allen, 420.

See 1862, 115.

SECTION 1. There shall be one chief justice and nine associate justices of the superior court.

SECT. 2. The court may be held by one or more of the justices, and when so held shall have and exercise all the power and jurisdiction committed to said court.

SECT. 3. The court shall have exclusive original jurisdiction of complaints for flowing land, and original jurisdiction of all civil actions except those of which the supreme judicial court, police courts, or justices of the peace have original and exclusive jurisdiction.

SECT. 4. The court shall have original and concurrent jurisdiction with the supreme judicial court, of petitions for partition, of writs of entry for the foreclosure of mortgages, and of all civil actions except in the county of Suffolk, in which the sum demanded in damages exceeds one thousand dollars; and the like jurisdiction in the county of Suffolk, where the sum demanded as aforesaid exceeds four thousand dollars; and original and concurrent jurisdiction with police courts and justices of the peace, where the debt or damages demanded, or the value of the property alleged to be detained, exceeds twenty dollars in cases where police courts and justices of the peace have jurisdiction, except actions of replevin of beasts distrained for the recovery of any penalty or forfeiture, or to obtain satisfaction for damages.

SECT. 5. The court shall have jurisdiction of all civil actions and proceedings legally brought before it by appeal or otherwise from justices of the peace, police courts, or courts of insolvency, and from the decisions of commissioners on insolvent estates of deceased persons.

SECT. 6. The court shall have original jurisdiction of all crimes, offences, and misdemeanors, and appellate jurisdiction of all offences tried and determined before a police court or justice of the peace; and in criminal cases legally brought before it its jurisdiction shall be final, except as otherwise provided.

SECT. 7. Actions and petitions for partition entered in the court in the several counties, except the county of Suffolk, where the ad damnum in the writ or property claimed, or value of the estate in controversy, exceeds one thousand dollars, and in the county of Suffolk four thousand dollars, may, before the trial is commenced, be carried, by consent of parties, to the supreme judicial court; the plaintiff shall enter the same at the next term of that court, and the cause proceed as if the action or petition was originally brought therein.

SECT. 8. If the defendant in such action, or the respondent in petition for partition, or any person in behalf of either of them, at the first term at which such defendant or respondent is held by law to appear, makes oath or affirmation before the clerk or a justice of the peace, that he verily believes he has a substantial defence; that the controversy exceeds the amount or value mentioned in the petition; that he intends to bring the cause to trial, a writ may be removed to the supreme judicial court, and the cause proceed as if originally brought in it.



SECT. 9. No action shall be commenced in the court wherein the debt or damages demanded do not exceed twenty dollars.

7 Mass. 478. 16 Mass. 448. 4 Pick. 169. 10 Pick. 478.

SECT. 10. A party aggrieved by a judgment founded upon matter of law apparent on the record, in any proceeding, civil or criminal, except judgment upon answers or pleas in abatement or motion to dismiss for defect of form of process, may appeal therefrom to the supreme judicial court. An issue of law joined in the superior court shall not be waived by consent of parties after such appeal has been entered in the supreme judicial court, but that court may, for good cause, allow the parties to withdraw or amend their pleadings, and if the same result in an issue of fact, the case shall be remanded to the superior court to be there tried; but no execution shall issue upon the judgment appealed from, unless the appeal is waived, until the case is so remanded.

8 Gray, 488. 13 Gray, 269, 476. 16 Gray, 120. 1 Allen, 480. 3 Allen, 481. 11 Allen, 472.  
12 Allen, 205. 13 Allen, 392. 99 Mass. 500, 684. 105 Mass. 211. 106 Mass. 343.

SECT. 11. When an appeal is taken or an exception is allowed, and the question arising thereon is duly entered in the supreme judicial court, any security which has been taken in the case, whether by bond, attachment, or otherwise, and whether the case is civil or criminal, shall stand as if no judgment had been rendered in the superior court, or exception taken, until final judgment is entered, unless execution is awarded because the exceptions are deemed frivolous and intended for delay.

SECT. 12. Orders or decrees of the supreme judicial court issued on questions arising in a case pending in the superior court shall be entered of record in that court, and such disposition be made of the case as law and justice require, conformably to the rescript or order of the supreme judicial court.

SECT. 13. Parties in an action submitted to the determination of the court may agree that the judgment therein shall be final.

SECT. 14. The clerks shall, at the expense of the party appealing or taking exceptions, or of the plaintiff if a case is reserved or reported, or of the commonwealth in all criminal cases, prepare and transmit to the supreme judicial court sitting for the proper county, one copy of every paper on file in the case, except papers used in evidence only, and also one copy of all papers made part of the case or referred to in the bill of exceptions or report, or so much thereof as necessary fully to present the question of law, for the use of the chief justice, and like copies for the clerk of the supreme judicial court, to be kept on file in said court; and one copy of the bill of exceptions, or report, or papers upon which the question of law arises on appeal, for each associate justice, and a like copy for each party and the reporter. And in case any original papers used in the trial of the cause, are needed in the supreme judicial court, they shall be transmitted to the clerk of said court, to be by him kept on file until the rescript in such action is sent. And the expense of such copies and transmission shall be taxed in the bill of costs of the prevailing party, if he has paid the same.

SECT. 15. If by reason of mistake or accident an appeal to the superior court is not duly entered therein, or if for a like reason a complaint founded on an omission to enter an appeal has not been entered by the appellee, the court upon petition may allow said appeal or complaint to be entered in the same manner, and upon the same terms, as questions or complaints are allowed in like cases to be entered in the supreme judicial court under section seventeen of chapter one hundred and twelve; and when so entered, the case shall proceed as if the complaint or appeal had been duly entered. Attachments made and security given in the original action shall not be revived or continued in force by the entry of an appeal or complaint of the original plaintiffs, allowed under this section, but shall remain discharged.

Debt or damage to exceed twenty dollars.  
R. S. 82, § 4.

Appeals, &c.; practice thereon.  
R. S. 82, § 10.  
1869, 196, § 26.  
19 Pick. 630.  
22 Pick. 278.  
4 Met. 123.  
5 Met. 88, 288.  
6 Met. 270, 280.  
7 Met. 211, 317, 488.  
8 Met. 263.  
10 Met. 174.  
3 Cush. 11, 57, 366.  
7 Cush. 115.  
8 Cush. 374, 409.  
2 Gray, 564.

Upon appeal, &c., security to be held until final judgment.  
R. S. 81, § 37.  
R. S. 82, § 18.  
1869, 196, § 31.

Decrees of S. J. C. in cases in superior court to be entered of record.  
103 Mass. 426.  
See 1806, 220.  
1869, 74.

Judgment may be final by agreement.  
R. S. 82, § 11.  
Clerk to transmit copies to S. J. C. at expense of appellant, &c.;  
1869, 196,  
§§ 33, 34.  
96 Mass. 143.  
103 Mass. 633.

original papers in case, &c.

Entry of appeal, &c., omitted, allowed on petition.  
R. S. 82,  
§§ 21, 22, 23, 24.  
1869, 196.

No security revived thereby.

117m. 279

*Special  
Terms  
(term) 1874.*  
200

Courts, when and  
where held  
1859, 196, § 10.  
Barnstable.  
See 1869, 354.

Berkshire.  
See 1868, 325.  
1871, 84.

Bristol.  
1877, c. 68  
1878, c. 95

Dukes County.  
1874, 34

Essex.  
See 1860, 62.  
1870, 315.

Franklin.

Hampden.  
See 1868, 250.

Hampshire.

Middlesex.  
See 1867, 220.

Nantucket.

Norfolk.  
See 1867, 105.

Plymouth.  
See 1862, 215, § 3.

Suffolk.

Worcester.

SECT. 16. The court shall be held in every year at the times and places following, that is to say:—

For the county of Barnstable, at Barnstable on the Tuesday next after the first Monday of April, and on the first Tuesday of September:

For the county of Berkshire, at Lenox, for civil business on the fourth Mondays of February, June, and October; for criminal business on the first Mondays of January and July:

For the county of Bristol, at Taunton on the second Mondays of March and September, and at New Bedford on the second Mondays of June and December:

For the county of Dukes County, at Edgartown, on the last Mondays of May and September:

For the county of Essex, for civil business, at Salem on the first Mondays of June and December, at Lawrence on the first Monday of March, and at Newburyport on the first Monday of September; for criminal business, at Salem on the third Monday of January, at Newburyport on the second Monday of May, and at Lawrence on the fourth Monday of October:

For the county of Franklin, at Greenfield, on the third Monday of March, and the second Mondays of August and November:

For the county of Hampden, at Springfield, for civil business on the second Mondays of March and June, and the first Monday of October; for criminal business on the third Monday of May and first Monday of December:

For the county of Hampshire, at Northampton, for civil business, on the third Monday of February, the first Monday of June, and the third Monday of October; for criminal business, on the second Monday of June and third Monday of December:

For the county of Middlesex, for civil business, at Lowell, on the second Monday of March and the first Monday of September, at Concord on the first Monday of June, and at Cambridge on the second Monday of December; for criminal business at Cambridge, on the second Monday of February, at Concord on the fourth Monday of June, and at Lowell on the third Monday of October:

For the county of Nantucket, at Nantucket, on the first Mondays of June and October:

For the county of Norfolk, at Dedham, on the fourth Monday of April, and the third Mondays of September and December:

For the county of Plymouth, at Plymouth, on the second Mondays of February and June and third Monday of October.

For the county of Suffolk, at Boston, for civil business, on the first Tuesdays of January, April, July, and October; for criminal business, on the first Monday of every month:

For the county of Worcester, for civil business, at Worcester, on the first Monday of March, the Monday next after the fourth Monday of August, and the second Monday of December; and at Fitchburg on the second Mondays of June and November; for Worcester, on the third Monday of January, the May, and the third Monday of October; and at Fitchburg on the first Monday of August.

SECT. 17. In the counties where both civil and established, civil business exclusively shall be transacted at criminal terms; and continuances cases shall be to civil and criminal terms respectively in the following order therefor, except as provided in the following:

SECT. 18. In such counties civil suits on recognition in criminal prosecutions cognizable by this court, shall have day in criminal terms.

Civil and criminal  
business to be  
transacted at  
respective terms.  
1859, 196, § 11.  
See 1863, 23.  
1870, 290.

Recs on recog-  
nition in  
criminal matters.  
R. S. 82, § 42.  
1841, 111, § 2.

SECT. 19. No justice shall hold in any one year more than four terms for the transaction of criminal business only.

SECT. 20. At any term of the court wherein criminal business may be transacted, causes arising under the provisions of chapters one hundred and forty-four, eighty-six, and eighty-seven, shall have precedence in the order said chapters are herein named, next after the causes of persons actually confined in prison and awaiting trial.

SECT. 21. The records of courts transferred to the superior court shall remain in the custody of its clerks. In the county of Suffolk the clerk of said court, for civil business, shall have the custody of said records in civil cases, and the clerk for criminal business shall have the custody of said records in criminal cases. Copies of said records may be certified by said clerks respectively. Judicial writs and processes founded upon such records shall issue under the seal of the superior court, in like manner and with the same effect as similar writs and processes founded upon its own records.

SECT. 22. The chief justice of the court shall receive an annual salary of three thousand seven hundred dollars, and each of the other justices an annual salary of three thousand five hundred dollars, from the treasury of the commonwealth.

No justice to hold more than four criminal terms a year.

1869, 196, § 22. Certain actions to have precedence.

1869, 196, § 54.

Records transferred, custody of. &c. 1869, 196, § 4.

Salaries. 1869, 196, § 17. See Ch. 15, § 36. See 1872, 278.

CHAPTER 115.

OF MATTERS COMMON TO THE SUPREME JUDICIAL AND SUPERIOR COURTS.

- SECTION**
1. Justices, tenure of office. Senior justice to act as chief, in case, &c.;
  2. to be conservators of the public peace.
  3. Courts may make judgments, frame writs, &c.;
  4. to make rules for practice, &c.;
  5. not to charge juries as to matters of fact;
  6. may set aside verdict, &c., before judgment, &c.
  7. Decision on pleas in abatement, &c., to be final. Exceptions to rulings, &c., when to be presented, &c.;
  8. to be allowed, &c., within five days, unless, &c.
  9. Trials not to be delayed by allowance of exceptions.
  10. If exceptions are frivolous, judgment may be entered, &c.
  11. If disallowed, may be proved, on petition.

- SECTION**
12. Copies of exceptions, &c., to be sent up within twenty days.
  13. Questions of law in Berkshire, &c., may, by consent of parties, be heard in Boston.
  14. Judgment may be entered as of former term.
  15. First day of term, how designated.
  16. Two or more sessions may be held at same term.
  17. Courts to allow, &c., accounts, &c.
  18. Justices to make convenient arrangements for holding courts.
  19. Court may adjourn to another shire town.
  20. Adjournment of court, in absence of justice.
  21. Same subject.
  22. Courts to establish seal and appoint officers.

*Trail by jury &c.*  
*1874, 248*

SECTION 1. The justices of the supreme judicial court and superior court shall continue to hold their offices according to the tenor of their commissions, and vacancies be filled in the manner provided by the constitution. In case of a vacancy in the office of chief justice of either court, or of his sickness or absence, his duties shall be performed by the senior justice of such court present and qualified to act.

SECT. 2. The justices of the supreme judicial court and superior court shall severally by virtue of their offices be conservators of the peace throughout the commonwealth.

SECT. 3. The courts respectively may make and award such judgments, decrees, orders, and injunctions, and shall issue all writs and processes necessary or proper to carry into effect the powers granted to them, and when no form for any such writ or process is prescribed, the

Justices, tenure of office. Absence, &c., of chief. Constitution, Ch. 2, § 1, art. 9. Ch. 8, art. 1. R. S. 81, §§ 1, 49. 1869, 196, § 7.

to be conservators of the public peace. R. S. 81, § 7.

Courts may make judgments, frame writs, &c. R. S. 81, §§ 6, 9. R. S. 82, § 39. 1863, 371, § 8.

1859, 196,  
 §§ 15, 16.  
 8 Allen, 386.  
 Courts to make  
 rules for practice,  
 &c.;  
 R. S. 81, § 10.  
 R. S. 82, § 37.  
 1859, 278, § 2.  
 1851, 261, § 2.  
 1852, 312,  
 §§ 84, 76.  
 1853, 371, § 4.  
 1857, 287, §§ 2, 3.  
 1859, 196,  
 §§ 35, 49.  
 8 Allen, 242.  
 14 Gray, 339.  
 See 1862, 84, § 2.

court shall frame one in conformity  
 usual course of proceedings in the

SECT. 4. The courts shall respec  
 promulgate uniform codes of rules  
 ducting the business of such courts  
 by law; for the purpose of—

First. Simplifying and shortenin  
 ings:

Second. Prescribing the terms  
 lowed by the court, or upon which  
 will be stricken out of the record;  
 preventing delay; securing parties  
 not in fault as nearly as possible i  
 have been if no mistake had been  
 and substance; and affording know  
 place of the discretion of the court

Third. For conducting trials:

Fourth. Presenting more distin  
 jury:

Fifth. Giving each party notice  
 evidence by the other party so as t  
 to prepare for trial:

Sixth. Respecting the forms of  
 the finding of the jury in matters o

Seventh. Expediting the decisi

Eighth. Remedying abuses and  
 ishing costs: *provided*, that such r  
 the state, and that the rules of the  
 those of the supreme judicial court,  
 in conformity therewith.

SECT. 5. The courts shall not  
 of fact, but may state the testimony  
 7 Allen, 207. 9 Allen, 278. 14 Allen, 18.

SECT. 6. The courts may, at a  
 action, set aside the verdict and  
 which a new trial may by law be  
 the case for determination by the s  
 9 Allen, 539. 98 Mass. 385. 106 Mass.

SECT. 7. Decisions of a justice  
 ment or on motions to dismiss for  
 final on the question raised. On m  
 civil or criminal, whether according  
 otherwise, a party aggrieved by a  
 ment, of the court in matters of  
 such exceptions, being reduced to  
 with the clerk, and notice thereof  
 presented to the court before the ad  
 which the exceptions are taken, an  
 in the case, or after the opinion, ru  
 to is given. For good cause show  
 days, unless by consent of the ad  
 court. The exceptions being exam  
 truth shall be allowed by the presi  
 party shall have an opportunity to  
 of such exceptions.

SECT. 8. The exceptions shall  
 within five days after the same are  
 tificate under his hand either allow  
 the judge finds that further time  
 hearing upon the same, not exce

not to charge  
 juries as to mat-  
 ters of fact;  
 4 Allen, 435.  
 may set aside  
 verdict, &c.  
 R. S. 82, § 19.  
 1855, 185.  
 1859, 196, § 32.  
 1 Allen, 18, 339.  
 115 m. 133.  
 Decision on pleas  
 in abatement,  
 &c., to be final.  
 Exceptions to  
 rulings, &c.,  
 when to be pre-  
 sented, &c.;  
 R. S. 81, §§ 27,  
 28. R. S. 82, § 12.  
 1859, 196, § 27.  
 5 Met. 297, 330.  
 4 Gray, 160, 573.  
 16 Gray, 120.  
 1 Allen, 274, 531.  
 2 Allen, 283, 384.  
 3 Allen, 212, 423.  
 6 Allen, 150.  
 9 Allen, 537, 539.  
 11 Allen, 472.  
 12 Allen, 199.  
 98 Mass. 477, 500.  
 104 Mass. 225.  
 105 Mass. 42, 210,  
 468.  
 106 Mass. 346.  
 See 1853, 180.  
 1854, 214.

to be allowed,  
 &c., within five  
 days, unless, &c.  
 1859, 196, § 27.  
 98 Mass. 37.

107 m. 329  
 110 m. 179  
 111 m. 88  
 1876 c. 74  
 Dist etc.  
 1874. 3694  
 116 m. 299  
 117 m. 311  
 112 m. 264

rendering more delay necessary, which shall be certified by the judge on restoring the papers.

SECT. 9. The trial of questions of fact shall not be prevented or delayed by the filing or allowance of exceptions, but the court shall proceed to the determination of such questions as if exceptions had not been taken, and such further proceedings be had as the court orders; but no judgment shall be entered unless the exceptions are adjudged immaterial, frivolous, or intended for delay.

SECT. 10. If the exceptions appear to the justice before whom the trial is had, to be frivolous, immaterial, or intended for delay, judgment may be entered, and execution awarded or stayed on such terms as the court deems reasonable, and in criminal cases sentence passed, notwithstanding the allowance of the exceptions. If execution is not awarded, any security which has been taken in the case, whether by bond, attachment, or otherwise, shall stand as if no judgment had been entered, until an order is made for final judgment.

SECT. 11. If the justice disallows or fails to sign and return the exceptions, or alters any statement therein, and either party is aggrieved, the truth of the exceptions presented may be established before the supreme judicial court upon petition setting forth the grievance, and thereupon, the truth thereof being established, the exceptions shall be heard, and the same proceedings had as if they had been duly signed and brought up to said court with the petition. The supreme judicial court shall make and promulgate rules for settling the truth of exceptions alleged and not allowed.

108 Mass. 535.

105 Mass. 42.

SECT. 12. Copies and papers relating to a question of law arising in either court upon appeal, by bill of exception, reserved case, or otherwise, shall within twenty days from the adjournment of the court for that term without day, be transmitted to and entered in the law docket of the supreme judicial court for the proper county; but the entry thereof shall not transfer the case, but only the question to be determined.

SECT. 13. Questions of law arising in the supreme judicial court or superior court, when sitting for the counties of Berkshire, Hampshire, Franklin, Hampden, or Worcester, may, by consent of all the parties filed in the case, be entered and heard at the law term of the supreme judicial court at Boston. And if the judge before whom any action or proceeding is tried in the courts in said counties in which a question of law is saved or arises for the determination of the full court, deems the exception or appeal frivolous, or intended for delay merely, or that the interests of the parties or the public require a more speedy determination thereof than can be attained in the terms established for the county in which the trial is had, he shall so certify and order the questions of law to be entered and heard at the term aforesaid in Boston; and all the other proceedings shall be the same as if the questions had arisen in any other county.

SECT. 14. The courts may at their discretion, whenever justice requires it, enter any judgment as of any day of a former term.

SECT. 15. In writs, processes, records, and judicial proceedings, civil and criminal, the day on which any term is to commence may be designated as the first, second, or other Monday, or other day in the week, in the month in which the same happens.

SECT. 16. Two or more sessions of the court may be held in the same county at any term for the transaction of business, when the public convenience requires; and such division of the business may be made as may conduce to its more speedy and convenient disposal.

SECT. 17. The courts shall respectively receive, examine and allow accounts for services and expenses incident thereto in the several counties, and order payment thereof out of the respective county treasuries.

SECT. 18. The justices of said courts respectively, or a majority of

Trials not to be delayed by allowance of exceptions.

R. S. 81, §§ 29, 33.

R. S. 82, § 13.  
1859, 196, § 28.  
See 1863, 180, § 2.

If exceptions are frivolous, judgment may be entered, &c.  
R. S. 81, § 29.  
10 Pick. 252.

If disallowed, may be proved, on petition.  
R. S. 81, §§ 28, 29, 30.

1851, 281.  
1859, 196, § 29.  
10 Pick. 252.  
4 Gray, 169, 573.  
6 Allen, 557.  
11 Allen, 481.  
98 Mass. 34.

Copies of exceptions, &c., to be sent up.  
1859, 196, §§ 26, 27, 34.

1 Allen, 401.  
8 Allen, 433.  
6 Allen, 240.  
12 Allen, 206.  
99 Mass. 532.  
108 Mass. 532.  
See 1864, 111.

Questions of law in Berkshire, &c., may, by consent of parties, be heard in Boston.  
1859, 196, § 38.  
108 Mass. 535.  
See 1869, 438.

Judgment may be entered as of former term.  
108 Mass. 841.  
First day of term, how designated.  
1859, 196, § 18.

Two or more sessions may be held at same term  
1851, 330, § 2.  
1859, 196, § 13.

Courts to allow, &c., accounts.  
1836, 4, § 10.  
1859, 196, § 20.  
104 Mass. 537.

Justices to

115 M. 56

1, shall, from time to time, make  
of some one of them at the  
ing the courts, as will be made  
prompt discharge of their duties.  
ECT. 19. If the public business  
established term in one shire  
ions, recognizances, and proceed-  
rned to the established term,  
: day in, the adjourned term.  
ECT. 20. When no justice is  
ted for holding a court, where  
adjournment thereof, the shires  
ities may adjourn the court for  
rcumstances require, or as ordered  
notice of such adjournment  
t house, and by a notification  
e, or published in some newspaper.  
ECT. 21. In such case any justice  
sheriff or his deputy to adjourn  
expressed in the order; and  
rdingly by public proclamation.  
ECT. 22. Each court shall have  
int all officers necessary for the

## CHAPTER

### OF POLICE

§  
courts established, &c. ;  
where not to be established.

#### JUSTICES AND CLERKS.

Appointment of the Justices.  
clerks, how chosen, &c. ;  
when justice may appoint;  
may appoint assistants;  
pro tempore, when appointed ;  
to be sworn, give bond, keep records, &c.  
justice, clerk, &c., not to act as counsel.

#### JURISDICTION.

Jurisdiction, general ;  
with powers necessary to discharge their  
duties ;

#### *Criminal.*

criminal, same as justices of the peace ;  
additional, concurrent with superior  
court  
same subject ;  
final, may be declined, &c.  
warrants, when court not in session ;  
where returnable, &c.

#### *Civil.*

Jurisdiction, civil, when exclusive ;  
when two or more are plaintiffs, &c.

#### SESSIONS, PROCEEDINGS, &c.

Terms of court, separate civil and criminal.  
Expenses, how paid.

## SECTION

30. Court, when to be held for civil business.  
40. Different sessions may be held at same time.

## SECTION

41. Jurisdiction, exclusive; concurrent. Records, &c., of justice's court transferred.  
42. Justices to make rules, &c.  
43. Clerk to render account of fees, &c.

SECTION 1. The cities and towns of Adams, Boston, Cambridge, Chelsea, Chicopee, Fall River, Gloucester, Haverhill, Lawrence, Lee, Lowell, Lynn, Milford, New Bedford, Newburyport, Pittsfield, Roxbury, Salem, Springfield, Taunton, Williamstown, and Worcester, shall each continue a judicial district under the jurisdiction of the police court thereof.

SECT. 2. No police court shall hereafter be established in any town having less than ten thousand inhabitants.

Courts;  
R. S. 87.  
See index to Supplement for additional courts, and alterations.

where not to be established.

## JUSTICES AND CLERKS.

SECT. 3. There shall be one justice and two special justices of each of said courts, except in the city of Boston. The justices now appointed shall continue to hold their offices according to the tenor of their commissions, and as vacancies occur, others shall be appointed in the manner provided by the constitution.

Appointment of the justices.  
Const. Ch. 3, art. 1.  
R. S. 87, § 80.  
1847, 270.  
7 Allen, 349.

SECT. 4. (R.) [The clerks now in office shall hold their offices until successors are chosen and qualified under the provisions of this chapter; and in every city or town containing, according to the next preceding state or national census, fourteen thousand inhabitants, in which a police court is established, and where the office of clerk is not established by law, a clerk of the court shall be chosen at the municipal election of the year in which clerks of other police courts shall next thereafter be elected. At the annual municipal election in the year eighteen hundred and sixty-one, and every fifth year thereafter, clerks of the several police courts, where the office of clerk shall then exist by law, shall be chosen by the districts, and shall hold office until their successors are chosen and qualified. If a clerk is removed, or otherwise vacates his office, another shall be chosen at the annual municipal election, for the remainder of the term.]

Clerks, how chosen, &c.;  
Amend. const. art. 19.  
See Ch. 112, § 4.  
(R.) Repeal and substitute.  
1866, 189.  
1872, 183.

1876, 14/

SECT. 5. The justice of a police court, when no clerk is required by law, may appoint a clerk, to be paid by him, and for whose official acts and doings he shall be responsible, and who shall hold his office during the pleasure of such justice.

when justice may appoint;  
1838, 147, § 2.  
1854, 335, § 12.  
8 Met. 171.  
9 Gray, 4.

SECT. 6. The clerk may, subject to the approval of the justice, or court, from time to time, appoint, to aid him in the discharge of his duties, one or more assistant-clerks, who shall be removable at his pleasure, and for whose doings he shall be responsible.

may appoint assistants;  
R. S. 87, § 28, 24.  
1838, 147, § 2.

SECT. 7. In case of the absence, death, or removal of a clerk, the court shall appoint a clerk pro tempore, who shall receive the compensation of the clerk and act until he resumes his duties, or the vacancy is filled by election.

pro tempore, when appointed;  
R. S. 87, § 18.

SECT. 8. The clerk, assistant-clerks, and clerk pro tempore, of each court shall be sworn; and the clerk shall give bonds in a sum not less than three times the amount of his annual salary, with sureties to the acceptance of the treasurer of the city, town, or county, with a condition for the faithful performance of the duties of his office. He or his assistants shall attend all sessions of the court and keep a record of all the proceedings. The records in civil and criminal cases shall be kept separately in different books.

to be sworn, give bond, keep records, &c.  
R. S. 87, § 19, 1874, 34 53  
1838, 147, § 2.  
1855, 270, § 4.  
1867, 264, § 4.

SECT. 9. No justice, clerk, or assistant-clerk, shall be retained or employed as counsel or attorney in any suit, complaint, or proceeding pending in his court, nor in any which has been examined or tried therein; and no special justice shall be so retained or employed in any case in which he shall officiate as justice.

Justice, clerk, &c., not to act as counsel, &c.  
R. S. 87, § 25, 44.  
1855, 321, § 12.  
1867, 264, § 4.





ceedings, and such jurisdiction shall, when the plaintiff and defendant both reside in the district, exclude the jurisdiction of other police courts and justices of the peace.

1 Met. 148.

11 Allen, 405.

See 1871, 144.

R. S. 87, §§ 11, 24.  
1848, 32, § 24.  
1849, 137.

SECT. 19. When there are two or more plaintiffs or defendants, or one or more trustees, the jurisdiction of the court shall not be exclusive, unless all the parties reside in the district.

Jurisdiction when two or more are plaintiffs, &c.  
R. S. 87, § 35.

## SESSIONS, PROCEEDINGS, &amp;c.

SECT. 20. Each court shall be held as often as necessary for civil and criminal business within the district for which it is established, in the court house, or in any other suitable place to be provided by the district, and may be adjourned from time to time to the same or any other place in the same district, as occasion requires. Separate terms of the court for civil and criminal business, and the times of holding the same, shall be fixed by the justice or justices by general rule.

Terms of court; separate civil and criminal.  
R. S. 87, § 42.  
See 1861, 115.  
1869, 386.

SECT. 21. The reasonable expenses of such courts for rent and care of court rooms, fuel, record books, blanks and stationery, and otherwise incidental to maintaining such courts, shall be certified by the justices thereof, and audited, allowed, and paid out of the county treasury to the parties entitled thereto, like costs in criminal cases, and two-thirds of such expenses shall be repaid to the county out of the treasury of the commonwealth.

Expenses, how paid.  
See 1861, 172.

SECT. 22. Each court, except in Boston, shall be held by the justice; but in case of his sickness, interest, absence, or other disability, and in case of a vacancy in the office of justice, the special justice holding the oldest commission shall have the powers and perform the duties of the justice: and at any time upon request of the justice either special justice may hold a session of the court, and two or more sessions may be held at the same time, the fact being stated upon the record. For every day occupied by a special justice, he shall receive the same rate of compensation as the justice, by whom he shall be paid, but such compensation shall not exceed the fees taxable by law for the services performed.

Courts, by whom held.  
R. S. 87, §§ 31, 46.  
1848, 331, § 3.  
1849, 86, §§ 4, 10.  
1854, 34, § 8.  
1856, 4.  
1857, 26, § 2.  
1857, 294, § 2.  
6 Cush. 333.  
14 Gray, 13, 19.  
7 Allen, 349.  
1862, 170.

SECT. 23. The justices may establish rules for the orderly and uniform conducting of the business of their respective courts, and when no clerk is appointed shall keep a fair record of their proceedings, and perform all other duties of clerk.

Rules. When justice to act as clerk.  
R. S. 87, § 37.  
1850, 310, § 7.

SECT. 24. The courts may issue summons and other process to procure the attendance of witnesses in the trial and examination of criminal cases, to run into any county to be served by the sheriff of any county or his deputies, or any constable of the city or town in which any witness may be.

Courts may issue summons, to run into any county.  
1838, 147, § 1.

SECT. 25. Complaints made to a police court shall be entered on a docket to be kept for the purpose, and all warrants issued upon any complaint shall be returned to the court specified in the warrant, with the return of the officer who had the same for service indorsed thereon.

Complaints to be entered on docket.  
Warrants, where returnable.  
1859, 236, § 1.

SECT. 26. Processes issuing from a police court having a clerk, shall be under the seal of the court, signed by the clerk or an assistant-clerk, and shall bear test of the justice or first justice who is not a party thereto; and in case of the death, absence, or disability of the justice, then of one of the special justices. In other respects the processes of said courts shall be substantially like the processes issued by justices of the peace.

Processes, how to bear test, &c.  
R. S. 87, § 12.  
1828, 147, § 2.  
1853, 179, § 3.  
1856, 270, § 5.  
1856, 423, § 7.  
1857, 254, § 8.  
13 Gray, 74.  
97 Mass. 541.

SECT. 27. When a trial or examination pending before a police court is adjourned to a future day, as provided in chapter one hundred and seventy, the parties and witnesses shall not be required to attend from day to day, but they shall attend at the time to which the cause is adjourned, and the recognizances, if any, shall be taken accordingly.

Attendance of parties, &c., when case is adjourned.  
R. S. 87, § 9.  
See 1863, 59.  
1872, 214.

ACT. 28. The clerk of each court, by law, and the justice of the peace, writs, processes, and returns, shall receive all fees, fines, forfeitures, and costs in civil and criminal cases. All fees for copies shall be paid to the clerk.

ACT. 29. The clerk or justice of the peace, shall account for and pay to the treasurer of the county, the amount of the fees, fines, and costs, on the first day of January, in each year.

ACT. 30. All fines and forfeitures, which accrue to any city or town, shall be paid to the city or town treasurer, as twice in each year; and the amount so received directly from the city or town treasurer, shall be paid to the city or town treasurer, and so paid, shall be accounted for in the same manner as is required of justices of the peace.

ACT. 31. Fees and costs in criminal cases, for the clerk, shall be made up, and paid to the clerk, in prosecutions before justices of the peace.

A

ACT. 32. A party aggrieved by a judgment of the superior court, may appeal the same to the superior court. Such appeal shall be heard, and disposed of, in all respects as in and by the acts in that behalf made, relating to the same.

S.

ACT. 33. The justices and judges of the peace, shall receive from the treasury of the State, the following salaries:—

For the justice, eight hundred dollars; for the justice, twenty-four hundred dollars.

For the justice, fifteen hundred dollars.

For the justice, one thousand dollars; for the justice, nine hundred dollars; for the justice, one thousand dollars.

For the justice, six hundred dollars; for the justice, six hundred dollars; for the justice, fifteen hundred dollars.

For the justice, four hundred dollars; for the justice, twenty-two hundred dollars.

For the justice, one thousand dollars.

For the justice, twelve hundred dollars; for the justice, fifty hundred dollars.

For the justice, nine hundred dollars.

For the justice, eight hundred dollars; for the justice, fifteen hundred dollars.

Salem, the justice, fifteen hundred dollars; the clerk, nine hundred dollars.

Salem.  
See 1869, 359.

Springfield, the justice, fifteen hundred dollars.

Springfield.  
See 1868, 330.  
1874, 180

Taunton, the justice, twelve hundred dollars; the clerk, six hundred dollars.

Taunton.

Williamstown, the justice, three hundred dollars.

Williamstown.

Worcester, the justice, fifteen hundred dollars; the clerk, eight hundred dollars.

Worcester;

In any district having a clerk elected as provided in section [four,] [three] for whom no salary is above provided, the clerk shall receive an annual salary of five hundred dollars.

of clerk elected under section four.

SECT. 34. No justice or clerk shall receive any compensation, besides his regular salary or allowance, for making or issuing, in any capacity, complaints, warrants, subpoenas, or other criminal process, which he is by law authorized to issue; or for any service performed by him in the discharge of his official duties in said court.

Justice, &c., to receive no additional compensation.  
1862, 159.  
1868, 103, § 3.

# POLICE COURT OF BOSTON.

[Abolished, and duties transferred, 1866, 279.]

SECT. 35. The justices of the police court of the city of Boston shall continue to hold their offices according to the tenor of their commissions, and as vacancies occur others shall be appointed in the manner provided by the constitution, so that there shall be three justices.

Three justices.  
Const. Ch. 3,  
art. 1.  
R. S. 7, § 1.

SECT. 36. The senior justice shall be the first justice of the court; and when the court is not in session any justice thereof may issue warrants and receive complaints.

First justice.  
Any justice to issue warrants, &c., when, &c.  
R. S. 87, § 17.  
Salaries of assistant-clerks.

SECT. 37. The assistant-clerks shall receive annual salaries from the treasury of the commonwealth, as follows: the first assistant-clerk, eighteen hundred dollars; the second, seventeen hundred dollars; the third, one thousand dollars, and the fourth, nine hundred dollars.

SECT. 38. The court shall be held for criminal business by one or more of the justices daily in the forenoon at nine o'clock, and in the afternoon, except on Saturday, at three o'clock or some hour thereafter. It may be held on Saturday afternoons if it appears expedient to any of the justices.

Court, when to be held for criminal business;  
R. S. 87, § 2.  
1868, 179, § 5.

SECT. 39. The court shall be held for civil business by one or more of the justices, weekly. Each term shall commence on Saturday, and actions therein may be continued to any future day fixed for the sitting of the court.

for civil business.  
R. S. 87, §§ 10,  
14 1868, 179, § 4.  
3 Pick. 508.  
6 Pick. 110.

SECT. 40. Different justices may hold different sessions at the same time for the trial of civil or criminal cases, in any rooms in the court house or in other places assigned by the aldermen of the city of Boston.

Different sessions at same time  
1868, 179, § 1.

SECT. 41. The court shall have the same jurisdiction as justices of the peace in all civil actions and proceedings; which shall, when all the plaintiffs and defendants reside within the district, exclude the jurisdiction of other police courts and justices of the peace. The court shall also have jurisdiction concurrently with the superior court in the county of Suffolk of all personal actions and proceedings in civil cases in which the amount demanded or the value of the property claimed exceeds one hundred dollars and does not exceed three hundred dollars: *provided*, the defendants reside or have their usual place of business in the county of Suffolk. All cases and proceedings pending in or returnable to the justices' court for the county of Suffolk, and the records and jurisdiction of said court, are transferred to said police court.

Jurisdiction, exclusive:  
concurrent.  
R. S. 87, § 11.  
1849, 187.  
1859, 190.  
See §§ 18, 19.

SECT. 42. The justices shall meet from time to time to establish necessary rules for the orderly and uniform conducting of the business of the court, and also to arrange, distribute, equalize, and insure a prompt and punctual discharge of their duties.

Records, &c., of justices' court transferred.

Justices to make rules, &c.  
R. S. 87, § 18.

SECT. 43. The clerk of the court shall render to the board of accounts

Clerk to render

## PROBATE C

of the county of Suffolk a qual  
taxed by him, and the board  
same to the treasurer of the c  
to the persons entitled thereto

## CH A

[See

OF P

### COURTS AND JURISDICTION.

#### SECTION

1. Judge and register of the court.
2. General jurisdiction.
3. Jurisdiction, first taken, effect of ;
4. when not to be contested.
5. Court may enforce specific performance contracts of deceased persons to lands.
6. Who to convey ; effect of the conveyance.

### APPEALS.

7. S. J. C. to be supreme court of probate
8. Appeal ;
9. when to be claimed and entered ;
10. reasons of to be filed, &c. ;
11. omitted by mistake, &c., allowed of ;
- 12, 13, 14. proceedings on petition for ;
15. proceedings in probate court suspended &c. — may be waived ;
16. proceedings in supreme court upon ;
17. when appellant fails to enter.
18. Jury trial in supreme court.

### MISCELLANEOUS PROVISIONS.

19. Rules of practice, how and by whom made.

## COURTS

**SECTION 1.** The judge and each county shall continue to of such county, and shall have given to judges and registers of

**SECT. 2.** The probate court of the probate of wills, granting who at the time of their decease county, and of persons who die administered within such county minors and others, and of all deceased persons and wards ; children and the change of names

**SECT. 3.** When a case is within two or more counties, the case by the commencement of proceedings for administration or guardianship first ; the deceased or ward in this case probate court of every other county

**SECT. 4.** The jurisdiction of it depends on the place of residence in any suit or proceeding, except when the want of jurisdiction

SECT. 5. When a person who has entered into a written agreement for the conveyance of real estate dies or is put under guardianship before making such conveyance, the probate court shall have jurisdiction concurrent with the supreme judicial court to enforce a specific performance, and upon a petition therefor presented by any person interested in the conveyance, shall order the petitioner to give notice to all persons interested, that they may appear and show cause either for or against the prayer of the petition.

SECT. 6. If upon the hearing it appears that the deceased, if living, or the ward, if not under guardianship, would be required to make the conveyance, the court shall order the executor or administrator of the deceased or the guardian of the ward to make the same; and when so made it shall have like force and effect as if made by the person who entered into the agreement to convey.

## APPEALS.

SECT. 7. The supreme judicial court shall be the supreme court of probate, and have appellate jurisdiction of all matters determinable by the probate courts and the judges thereof, except in cases in which other provisions are specially made.

SECT. 8. Any person aggrieved by an order, sentence, decree, or denial, of the court or judge, except in cases otherwise provided for, may appeal therefrom to the supreme judicial court.

8 Cush. 529. 6 Gray, 137. 18 Gray, 388. 16 Gray, 577. 8 Allen, 556.

SECT. 9. The appeal shall be claimed and notice thereof given at the probate office within thirty days after the date of the act appealed from, and be entered in the supreme judicial court at the rule day appointed by said court for the same county, next after the expiration of fifty days from the date of the act so appealed from.

SECT. 10. The appellant shall file in the probate office his reasons of appeal, and cause an attested copy thereof to be served on the adverse party fourteen days at least before the time when the appeal is to be entered.

SECT. 11. If a person aggrieved omits to claim or prosecute his appeal, without default on his part, the supreme court of probate, if it appears that justice requires a revision of the case, may on the petition of the party aggrieved, and upon such terms as it deems reasonable, allow an appeal to be entered and prosecuted with the same effect as if it had been done seasonably. Such petition may be entered in the clerk's office at any time, and the order of notice thereon may be made returnable at a rule day.

SECT. 12. Such appeal shall not be allowed without due notice to the party adversely interested, nor unless the petition therefor be filed within one year after passing the decree or order complained of, except as provided in the following section.

SECT. 13. If the petitioner was without the United States at the time of passing the decree or order, he may file his petition at any time within three months after his return, and within two years after the act complained of.

SECT. 14. Appeals and petitions for appeal shall be entered on a docket with cases in equity, and shall have the same rights as to hearing and determination as such cases.

SECT. 15. After an appeal is claimed, and notice given at the probate office, all proceedings in pursuance of the order, sentence, decree, or denial appealed from, shall cease until the determination of the supreme court of probate is had; but if the appellant in writing waives his appeal before the entry thereof, proceedings may be had in the probate court as if no appeal had been taken.

SECT. 16. The supreme court of probate may reverse or affirm, in

Court may enforce specific performance of contracts of deceased persons to convey lands  
1855, 374, § 1.  
1869, 30, § 1.  
7 Gray, 538.  
12 Gray, 198.  
14 Gray, 611.  
101 Mass. 511.

Who to convey; effect of conveyance.  
1855, 374, § 2.  
1869, 30.  
8 Allen, 25.

S. J. C. to be supreme court of probate, &c.  
R. S. 88, § 83.

1874, 339

Appeal;  
R. S. 88, § 34.  
6 Met. 194.  
11 Met. 390.  
4 Cush. 408.

when to be claimed and entered;  
R. S. 88,  
§ 34, 33.  
1859, 196, § 6.  
1859, 227, § 12.

reasons of to be filed, &c.  
R. S. 88, § 37.  
101 Mass. 507.

omitted by mistake, &c., allowed on petition;  
R. S. 88, § 89.  
1 Gray, 522.  
14 Gray, 279.  
2 Allen, 394.  
7 Allen, 242.  
18 Allen, 207.

proceedings on petition for;  
R. S. 88, § 40.

same subject;  
R. S. 88, § 41.  
16 Gray, 578.

entry of, &c.;  
101 Mass. 598.  
See 1860, 189.

proceedings in probate court suspended by, &c., may be waived;  
R. S. 88, § 42.  
4 Cush. 48.  
16 Gray, 578.

proceedings in

supreme court  
upon  
R. S. 83, § 44.  
16 Gray, 518.  
7 Allen, 192, 242.  
12 Allen, 16.

1876-213  
§ 12

Proceedings  
when appellant  
fails to enter his  
appeal  
R. S. 83, § 45.

Jury trial in su-  
preme court.  
R. S. 83, § 46.

whole or in part, the sentence or act a  
decree thereon as the probate court or  
remit the case for further proceedings,  
as law and justice shall require.

SECT. 17. If the appellant fails to  
the supreme court of probate may, up  
interested, affirm the former sentence  
and justice shall require.

SECT. 18. If, upon the hearing of a  
probate, any question of fact occurs p  
may cause it to be so tried upon an is  
the direction of the court.

#### MISCELLANEOUS

Rules of practice,  
how and by  
whom estab-  
lished  
R. S. 83, § 8.

SECT. 19. The several judges shall  
regulating the practice and conducting  
cases not expressly provided for by la  
of their rules and course of proceedin  
as soon as conveniently may be after  
judicial court may alter and amend  
further rules from time to time for reg  
bate courts as it deems necessary, in o  
formity in the proceedings.

Judge may frame  
and issue neces-  
sary warrants,  
&c  
R. S. 83, § 9.

SECT. 20. The judge shall make an  
necessary or proper to carry into effect  
when no form for a warrant or proces  
rules of the court, he shall frame one i  
of law, and the usual course of procee

Decrees, &c., to  
be in writing, and  
what papers to be  
recorded  
R. S. 83, § 7.  
6 Met. 319.  
11 Gray, 107.  
Nes 1864, 98.

SECT. 21. All his decrees and ord  
the register shall record, in books to be  
and orders, wills proved in the court,  
testamentary and of administration, wi  
and bonds; and all other acts and pro  
by the rules of the court or a special c

Regularity of  
proceedings pre-  
sumed in certain  
cases.  
R. S. 83, § 18.

SECT. 22. When the validity of a  
another suit or proceeding, every thing  
proved in order to render the decre  
proved by parol evidence at the time o  
required to be recorded, shall after two  
sumed to have been done or proved, u  
same record.

Acts in vacation.  
R. S. 83, § 4.  
11 Cr. v., 107.  
Nes 1870, 275.

SECT. 23. Orders of notice and ot  
as matters of course and do not requir  
party, may be made and done in vacat

Court may revoke  
commissions, &c.  
R. S. 83, § 31.  
5 Allen, 144.  
12 Allen, 1.

SECT. 24. Any warrant or commis  
estate, for examining the claims on in  
of real estate, or for the assignment of  
estate, may be revoked by the judge  
thereupon issue a new commission, or  
stances of the case shall require.

Costs of court,  
as to costs.  
R. S. 83, § 47.  
7 Gray, 412.  
112 M. 269

SECT. 25. In cases contested either  
preme court of probate, costs in the  
awarded to either party, to be paid b  
parties to be paid out of the estate w  
versy, as justice and equity shall requi

Executions  
therefor.  
R. S. 83, § 48.

SECT. 26. When costs are awarde  
other, said courts may issue execution  
tised in the courts of common law.

Accountants

SECT. 27. (R.) [When an executor, a

who is required to make oath to an account, is unable by reason of sickness or otherwise to attend personally in the probate court, the judge may administer the oath to the accountant out of court, or may by his commission authorize a justice of the peace to administer it. And a certificate of the oath with the account and vouchers produced therewith, and the commission, if any, shall be returned into the registry of probate and there filed and recorded.]

SECT. 28. (R.) [All other oaths required of executors, administrators, guardians, and trustees, and all oaths required of commissioners of insolvency, appraisers, dividers of estates, and other persons, in relation to any proceeding in the court, may be administered by the judge or register in or out of court, or by a justice of the peace; or by the city or town clerk where there is no justice of the peace, and a certificate thereof, when administered out of court, shall be returned into the registry of probate and there filed and recorded.]

SECT. 29. Persons having business in the court may select such newspapers as they may prefer for the publication of legal notices ordered upon their applications, but if the judge deems the newspaper thus selected insufficient to give due publicity, he may order the publication in one other newspaper.

SECT. 30. The register shall make, without charge, one copy of all wills proved, inventories returned, and accounts settled; of all partitions of real estate and assignments of dower; and of all orders and decrees of the court; and shall deliver the same when demanded to the executor, administrator, guardian, widow, heir, or other party principally interested. For additional copies of such documents, and copies of other papers, he shall be paid by the person demanding the same at the rate of twelve cents a page.

SECT. 31. Each county shall provide all books necessary for keeping the records and all printed blanks and stationery used in probate proceedings.

SECT. 32. No clerk or other person employed in the office of a probate court shall be commissioner of insolvency or appraiser or divider of an estate in any case within the jurisdiction of the court, unless his appointment is requested by all parties in interest.

#### SESSIONS OF THE COURTS.

SECT. 33. The judge may keep order in court and punish any contempt of his authority in like manner as such contempt might be punished in the superior court.

SECT. 34. He may adjourn the court as occasion requires; and when he is absent at the time appointed for holding a court, the register shall adjourn it as he thinks necessary, or as ordered by the judge; the register may also adjourn the court when there is a vacancy in the office of judge.

SECT. 35. No court shall be held by adjournment or otherwise unless the register, assistant-register, or a temporary register is present.

SECT. 36. Probate courts shall be held in each year at the times and within the cities and towns hereinafter mentioned, in such places therein as the several judges shall from time to time appoint; sufficient notice of which appointments shall be given by the respective judges as often as changes take place, by advertisement in some newspaper, or by posting the same in some public places, viz.: —

For the county of Suffolk, at Boston, on every Monday in each month, except July:

For the county of Essex, at Salem, on the first Tuesday of each month; at Lawrence, on the second Tuesday of each month, except April, May, July, August, and October; at Gloucester, on the second

may be sworn out of court, in case, &c.  
R. S. 83, § 29.  
(R.) *Repeal and substitute.*  
1871, 122.

Oaths of other persons, how administered.  
R. S. 15, § 48.  
R. S. 83, § 30.  
1852, 241.  
(R.) *Repeal and substitute.*  
1871, 122.

Parties may select newspaper for notice.  
1851, 139.  
12 Allen, 332.

What copies register shall make, free of charge; and for what he may receive pay.  
R. S. 83, § 53.  
See 1864, 38.

Books and stationery.  
R. S. 83, § 54.  
7 Gray, 472.  
See 1872, 125.

Clerks, &c., not to be commissioners, except, &c.  
R. S. 83, § 28.  
1838, 164, § 2.

Judge may keep order, &c.  
R. S. 83, § 10.

Adjournment of court.  
R. S. 83, § 3.  
1836, 41.

No court without register.  
R. S. 83, § 20.  
11 Gray, 107.  
Times and places of holding courts.  
Const. Ch. 3, art. 4.  
R. S. 83, § 2, 55, 56, 57.  
1858, 98.

Suffolk.  
1838, 54.

Essex.  
R. S. 83, § 55.  
1848, 234.  
1855, 407.  
1866, 1.

**Middlesex.**  
1857, 78.  
(R.) *Substitute*  
1868, 218.

**Worcester.**  
1837, 141.  
1848, 255.  
1854, 318.  
1866, 162.  
(R.) *Substitute*  
1869, 253.

**Hampshire.**  
R. S. 83, § 55.  
1843, 40.  
See 1866, 60.

**Hampden.**  
1850, 297.  
(R.) *Substitute*  
1866, 123.

**Franklin.**  
R. S. 83, § 55.  
1850, 244.  
See 1867, 249.

**Berkshire.**  
1867, 16.  
(R.) *Substitute*  
1869, 60.  
1872, 202.

**Norfolk.**  
R. S. 83, § 55.  
1844, 127.  
(R.) *Substitute*  
1870, 193.

**Bristol.**  
1857, 159.  
(R.) *Substitute*  
1862, 5.

Tuesday of April and October; at N of each month, except March, May, ber; at Haverhill, on the third Tue Ipswich, on the third Tuesdays of Ma

For the county of Middlesex, (R Tuesdays of each month, (except Jul January, February, March, April, Aug Lowell, on the first Tuesdays of Feb December; at Concord, on the first ' and October; at Groton, on the fourth and at Framingham, on the fourth T

For the county of Worcester, ( second Tuesdays of May and Octobe days of May and October; at Temp the third Tuesdays of May and O next after the third Tuesdays of Ma fourth Tuesday of May and the Wed day of October; at Uxbridge, on th Fitchburg, on the Wednesdays next and October; and at Worcester, on t

For the county of Hampshire, at N every month; at Amherst, on the August; at Belchertown, on the seco and at Chesterfield, on the third Tue

For the county of Hampden, (R.) days of January, February, March, A and on the fourth Tuesdays of April, field, on the third Tuesdays of March at Monson, on the second Tuesday second Tuesday of September:]

For the county of Franklin, at ( every month except November; at 1 of May and September; at Orange, and December; at Lock's Village, in day of July; at Conway, on the third on the fourth Tuesday of May; at Sh day of February and fourth Tuesday

For the county of Berkshire, (R.) | January, February, March, April, Ma December, on the third Tuesday of J November; at Great Barrington, on 1 Tuesdays of February and May, nex and next after the second Tuesday of the second Tuesdays of January and days of April and July; at Adams, c second Tuesdays of January and O Tuesdays of April and July:]

For the county of Norfolk, (R.) [a every month; at Quincy, on the fo August, and November; at Roxbur third, fourth, and fifth Saturdays of . urdays of August; at Wrentham, on 1 and November; at Medway, on the 1 and October:]

For the county of Bristol, (R.) [at January, March, and June, and on the of November; at New Bedford, on th Friday next after the first Tuesday August, and on the first Tuesday of first Tuesday of April; at Fall Riv



first Tuesdays of April and July, and on the first Tuesday of October; at Attleborough, on the first Tuesday of May; at Norton, on the first Tuesday of July; at Seekonk, on the first Tuesday of September; and at Rehoboth, on the Friday next after the first Tuesday of September:]

For the county of Plymouth, (R.) [at Plymouth, on the third Mondays of January, February, and May, on the second Mondays of April and August, and on the first Monday of December; at Scituate, on the first Tuesday of June, and last Tuesday of November; at Hingham, on the first Tuesday of March and last Tuesday of August; at East Bridgewater, on the first Tuesdays of April, July, and October; at Bridgewater, on the last Tuesday of February; at North Bridgewater, on the last Tuesday of July; at Middleborough, on the first Tuesdays of May and August, and last Tuesday of October; at Wareham on the Wednesdays next after the first Tuesdays of May and November; at Abington, on the second Monday of January; and at Hanover, on the last Monday of September:]

For the county of Barnstable, (R.) [at Barnstable, on the second Tuesdays of January, February, March, August, September, and December, and on the third Tuesdays of May and June; at Sandwich, on the second Tuesday after the first Monday of November; at Falmouth, on the second Wednesday after the first Monday of November; at Harwich, on the third Monday of April and the last Monday of October; at Brewster, on the Tuesday next after the third Monday of April; at Dennis, on the Thursday next after the second Tuesday of October; at Orleans, on the Wednesday next after the third Monday of April and on the Tuesday next after the last Monday of October; at Wellfleet, on the Wednesday next after the last Monday of October; at Truro, on the Thursday next after the third Monday of April; and at Provincetown, on the Friday next after the third Monday of April and on the Thursday next after the last Monday of October:]

For the county of Dukes County, (R.) [at Tisbury, on the third Monday of April and on the first Mondays of March and September; at Edgartown, on the third Mondays of January and July, and on the first Mondays of June and December; and at West Tisbury, on the third Monday of October:]

For the county of Nantucket, (R.) [at Nantucket, on the first Tuesday of every month.]

Plymouth.  
R. S. 83, § 55.  
1845, 73.  
1850, 204.  
1852, 249.  
1855, 320.  
1856, 122.

(R.) Substitute  
1863, 245.  
1868, 169.  
1870, 37.

Barnstable.  
R. S. 83, § 55.  
1837, 98, § 1.  
1853, 74.  
1857, 118.

(R.) Substitute  
1839, 277.

Dukes County.  
R. S. 83, § 55.  
1856, 265.  
1859, 56.

(R.) Substitute  
1862, 114.

Nantucket.  
1859, 161.

(R.) Substitute  
1863, 146.

## CHAPTER 118.

[Suspended while United States bankruptcy law is in force, 97 Mass. 246.]

### OF COURTS OF INSOLVENCY.

#### GENERAL PROVISIONS.

##### SECTION

1. Courts of insolvency. Judges. Registers;
2. to have original jurisdiction, &c.;
3. to be held in shire towns, &c. Adjournment of.
4. Judge may approve bonds, &c.;
5. may punish for contempt, administer oaths, &c.
6. Proceedings to be matters of record. Evidence.
7. Register, duties of. Docket;
8. may administer oaths and adjourn court;
9. fees of, for copies.
10. Docket, &c., open to inspection.
11. Warrants, &c., when returnable, &c., how executed, &c.
12. Parties may select newspapers.
13. Counties to furnish court rooms, and room for records, &c.

##### SECTION

14. Commonwealth to pay expenses.
15. Judges may make rules, &c.
16. Jurisdiction, &c., of S. J. C.

#### APPLICATIONS BY THE DEBTOR. FIRST MEETING.

17. Who may petition, &c.
18. Judge to issue warrant to messenger. Contents of warrant.
19. Messenger to receive debtor's property.
20. Debtor to deliver property and schedule.
21. Perishable, &c., property may be sold before appointment of assignee.
22. First meeting. Return of warrant. Schedules.
23. If no notice, meeting adjourned.
24. If debtor dies, proceedings to continue.

#### DEBTS AND PROOF OF CLAIMS.

25. What debts and demands may be proved.

*when Court is 2 party.*

*1875-179*

## SECTION

26. Mutual debts may be set off.
27. Provision in case of mortgage, pledge, or lien.
28. Claims to be proved on oath. Form of oath.
29. Oath may be made by attorney ;
30. before a justice of the peace.
31. Certain claims may be postponed.
32. Claims in certain cases not to be allowed.
33. Judge to allow debts proved. Creditor may act by attorney.
34. Appeal from judge's decision on claims. Entry of appeal.
35. Proceedings on appeal.
36. Judgment on appeal. Costs.
37. Evidence of claims may be withdrawn by leaving copy attested, &c.

## ASSIGNMENT AND ASSIGNEE.

38. Assignee, choice of, &c. ;
39. judge to approve, and may order new election, &c. ;
40. to give bond, &c. ;
41. failing to give bond, to be removed ;
42. Judge to assign property to ;
43. to record assignment and give notice.
44. Effect of assignment.
45. Attachments, how preserved.
46. Assignee to demand and sell estate, and keep accounts ;
47. to commence and prosecute suits, which shall not abate on his death.
48. Certain drafts, &c., assigned, not to be offset, &c.
49. Money and property of debtor to be kept separate by assignee ;
50. court may direct temporary investment of, when, &c.
51. Assignee to give notice of meetings ;
52. compensation of ;
53. may submit controversies to arbitration ;
54. may sell perishable property pending dispute of title. Property recovered by action, &c. ;
55. to certify and render accounts ;
56. removal of, by creditors ;
57. by judge upon complaint ;
58. when out of state and refusing to obey, &c., or any cause ;
59. may resign ;
60. vacancies in office of, may be filled by appointment or election ;
61. effect of resignation, &c., of ;
62. vesting of estate upon death, &c., of ;
63. former to execute deeds, &c. Judge to pass orders for fulfilment of duties, &c., of ;
64. preferred creditors not to vote for, &c. Ineligibility of, not to affect titles ;
65. penalty on, for neglect, &c. ;

## EXAMINATION, &amp;c., OF DEBTOR.

66. Debtor to submit to examination ;
67. examination of, when in prison ;
68. when sick or unable to attend ;
69. when out of state without wilful default ;
70. to do acts necessary to confirm the assignment and enable assignee to recover, &c. ;
71. proceedings against, for refusing to execute instruments or obey decrees of judge, &c.

## SECOND AND THIRD MEETINGS. OATH AND DISCHARGE.

72. Judge to appoint second meeting. Debtor may amend schedule of creditors. Oath.

## SECTION

73. Upon failure to call or hold meeting, court may order.
74. If meeting liable to be defeated, register may call on order of judge.
75. Third meeting. Certificate of discharge.
76. Effect of discharge.
77. Debtor imprisoned, &c., to be discharged, on certificate ;
78. discharged from arrest, &c., and property exempt from attachment, &c.
79. Debts arising from defalcation and claims for necessities not discharged.
80. Sureties, &c.
81. Discharge by assent of creditors.
82. upon second and third insolvency ;
83. Creditors may assent notwithstanding appeal.
84. Debtor failing by accident, &c., to take oath, may be discharged.
85. Appeal from decision of judge on question of discharge.
86. Proceedings on appeal.

## MATTERS AVOIDING DISCHARGE.

87. Discharge forfeited by proceedings in fraud of creditors. Who may contest.
88. Fraudulent preferences avoid a discharge.

## PREFERENCES.

89. Fraudulent payments, &c., void. Creditors to prove claim.
90. Preceding sections not to apply to securities.
91. Sales, &c., to prevent property from coming to assignee, &c., void.

## ALLOWANCE AND SURPLUS.

92. Allowance to debtor ;
93. in case of death.
94. Surplus to be returned to debtor.

## ACCOUNTS AND DIVIDENDS.

95. Assignee to exhibit accounts on oath if required. Judge to order dividend.
96. Preferred claims.
97. Reservation for absent creditors.
98. Second dividend. Assignees' accounts.
99. Outstanding debts, &c., may be sold.
100. Suits on claims sold by assignee. Costs.
101. Further divide
102. Former dividend

## APPLICA

103. Applications by
104. Warrant to les
105. If attachment
106. If attachment
107. If attachment
108. If attachment
109. If attachment
110. If attachment
111. If attachment
112. If attachment

## CONCEAL

106. Debtor to be d
107. Proceedings a
108. Proceedings a
109. Proceedings a
110. Proceedings a
111. Proceedings a
112. Proceedings a

## ITSELF

113. Corporations ;
114. Corporations ;
115. Corporations ;
116. Corporations ;
117. Corporations ;
118. Corporations ;
119. Corporations ;
120. Corporations ;
121. Corporations ;
122. Corporations ;

- SECTION
114. Proceedings similar to those against a person.
115. Claims before last dividend provable.
116. Schedules. Duties, &c., of officers. Oath.
117. Franchise of corporations authorised to take toll, may be sold. Purchaser may have corporation organized anew.
118. Property may be sold in shares, and purchasers organized.
119. Land damages preferred claims.
120. Void preferences.
121. No allowance or discharge to corporation, &c.
122. Proceedings against a corporation.
123. Redemption of mortgages.
124. Mortgages not affected.
- FEES AND COSTS.
125. Fees for warrant, &c.

- SECTION
126. Register to receive and account for fees.
127. Costs when attachments are dissolved;
128. award of;
129. execution may issue for.
- VACATING PROCEEDINGS.
130. Proceedings may be vacated.
- RETURNS.
131. Judges to make returns. Returns to be recorded and open for inspection.
- CASES BEFORE COMMISSIONERS, &c.
132. Jurisdiction of commissioners, &c., in cases pending.
133. Removal of cases upon death, &c., of commissioner, &c.;
134. papers, &c., to be deposited in probate office.

### GENERAL PROVISIONS.

SECTION 1. The courts of insolvency in the several counties shall continue courts of record, and the judges and registers of probate and insolvency in their respective counties shall be judges and registers thereof.

SECT. 2. The courts shall have original jurisdiction in their respective counties of all cases of insolvency arising under the provisions of this chapter.

SECT. 3. Each court shall be held at the shire towns of the county at such times as the judge appoints, and may be held at such other places as will best promote the convenience of the public. The judge may adjourn any court or meeting from time to time as occasion requires, and all things lawfully done at an adjourned meeting shall have like force and effect as if done at the original meeting.

SECT. 4. The judge may in vacation as well as in court approve compositions and assignees' bonds, approve or order sales, receive petitions, issue orders of notice and warrants, and do such other official acts as are done as matters of course and do not require notice to an adverse party.

SECT. 5. The judge may keep order in his court, and punish any contempt of his authority; administer oaths, issue commissions, take testimony, and compel the attendance of witnesses and the giving of testimony, in the same manner and to the same extent as the superior court; and may appoint such officers to attend upon the court as are necessary for the transaction of its business and keeping order therein.

SECT. 6. The proceedings in courts of insolvency shall be deemed matters of record, and the assignment and certificate of discharge shall be recorded in full. The other proceedings need not be recorded at large, but shall be carefully filed, kept, and numbered, in the office of the register. Copies of all parts of the records, and of records of prior proceedings in insolvency deposited in his office, duly certified by the register, shall in all cases be admissible as evidence, prima facie, of the facts therein stated.

SECT. 7. The register shall keep a docket with an alphabetical index of facts in court, in which he shall enter short memorandums, with the numbers, of all proceedings and papers filed. He [shall] make all computations of dividends and orders of distribution, and shall furnish to the assignee a certified copy of such orders, and of the schedules of creditors and assets filed in each case.

SECT. 8. He may administer all oaths required in the course of proceedings before the court, except the oath described by section seventy-two; and in the absence of the judge or a vacancy in that office he may adjourn a court or meeting.

- Courts.  
Judges. Registers;  
1856, 284, § 1.  
1858, 32, § 1.  
1859, 98.  
to have original jurisdiction, &c.;  
1856, 98, § 10.  
to be held in shire towns, &c.  
1858, 163, § 15.  
1859, 284, § 3.  
1858, 98, § 11.  
7 Met. 431.  
4 Cush. 584.  
8 Gray, 193.  
Judge may approve bonds, &c.;  
1856, 284, § 4.  
may punish for contempt, administer oaths, &c.  
1858, 163, § 15.  
1856, 284, §§ 7, 9.  
1859, 193.  
Proceedings to be matters of record. Evidence.  
1838, 163, § 14.  
1858, 32, §§ 1, 2.  
6 Met. 518.  
5 Cush. 615.  
6 Cush. 185, 362.  
10 Cush. 545.  
10 Cush. 645.  
3 Gray, 255.  
4 Allen, 77.  
Register's duties. Docket.  
1854, 329, § 2.  
1856, 284, § 13.  
1858, 32, §§ 1, 2.  
6 Cush. 185, 338.  
10 Cush. 645.  
See 1863, 159.  
1856, 259, § 2.  
may administer oaths and adjourn court;  
1838, 16, § 1.  
1856, 284, § 13.  
1858, 141, § 5.

Fee of, for  
copies.  
1856, 284, § 22.

Docket, &c.,  
open to inspec-  
tion.  
1856, 284, § 13.

Warrants, &c.,  
when return-  
able, &c.  
1848, 304, § 6.  
1856, 284, § 6.

Parties may se-  
lect newspapers.  
1861, 188

Counties to fur-  
nish court  
rooms, and  
room for rec-  
ords, &c.  
1856, 284, § 8.  
Commonwealth  
to pay expenses.  
1856, 284, § 23.

Judges may  
make rules, &c.  
1856, 284, § 10.

Jurisdiction,  
&c., of S. J. C.  
1838, 163, § 18.  
1851, 327, § 19.  
2 Met. 569, 573.  
4 Met. 392, 504.  
6 Met. 537.  
8 Met. 19.  
9 Met. 23, 409.  
1 Cush. 170, 449.  
2 Cush. 294.  
4 Cush. 127, 270,  
448.  
7 Cush. 181, 183.  
10 Cush. 173.  
11 Cush. 582.  
1 Gray, 584.  
3 Gray, 239, 242,  
248, 533.

Who may peti-  
tion, &c.  
1838, 163, § 1.  
1841, 124, § 1.  
1855, 918, § 1.  
1858, 93, § 10.  
4 Met. 401, 403.  
7 Met. 427.  
8 Met. 129.

Judge to issue  
warrant to mes-  
senger.  
Contents of  
warrant.  
1838, 163, §§ 1, 2.  
1841, 124, § 1.  
1844, 176, § 10.

SECT. 9. For copies of orders for distribution and of schedules, in addition to those required by law, and for copies of other papers, he shall be paid by the person demanding the same, at the rate of fourteen cents a page, and no more.

SECT. 10. The docket, and all books, records, documents, and papers, in his office, relating to insolvency, shall at all reasonable times be open to the inspection of the public.

SECT. 11. All assignments, warrants, orders of notice, and processes, issuing from the court, shall be under the seal thereof, and shall be executed and obeyed throughout the commonwealth; and any officer or person to whom they are legally directed may serve the same in any county. All warrants shall be returnable not less than ten nor more than sixty days from the issuing of the same.

SECT. 12. Persons having business in court may designate the newspapers in which notices under their applications shall be published; but if the newspapers thus selected are deemed by the judge insufficient to give publicity to the notice, he may order publication in one other newspaper.

SECT. 13. Each county shall provide suitable court rooms in the shire towns; and a suitable fire-proof room, in which shall be kept all the records, books, documents, and papers, appertaining to the business of the court, and the records in all cases in insolvency.

SECT. 14. All expenses attending the sessions of the courts, and the transaction of business therein, for blank books for records, and for blank forms and stationery necessary for the business of the courts, shall be paid out of the treasury of the commonwealth.

SECT. 15. The judges or a majority of them shall from time to time make rules in writing for regulating the practice and conducting the business of the courts in all cases not provided for by law. They shall, as soon as conveniently may be after making and adopting such rules, submit a copy thereof to the supreme judicial court for approval, and amendment or alteration.

SECT. 16. The supreme judicial court shall have a general superintendence and jurisdiction of all cases arising under this chapter; and, except when special provision is otherwise made, may, upon the bill, petition, or other proper process, of any party aggrieved, hear and determine the case as a court of equity. It may from time to time make such general rules and forms as it deems necessary to establish and maintain a regular and uniform course of proceedings in all the counties. The powers thus granted may be exercised either by said court or by any justice thereof in term time or vacation, except that general rules and forms shall be made only at a law term.

4 Gray, 431. 8 Gray, 316. 9 Gray, 255. 13 Gray, 564. 6 Allen, 560. 7 Allen, 112.

#### APPLICATIONS BY THE DEBTOR. FIRST MEETING.

SECT. 17. Any inhabitant of this state owing debts contracted while such inhabitant, may apply by petition to the judge for the county within which he resides, setting forth his inability to pay all his debts, and his willingness to assign all his estate and effects for the benefit of his creditors, and praying that such proceedings may be had in the premises as are provided in this chapter.

1 Cush. 531. 9 Gray, 250. 12 Gray, 206. 4 Allen, 170. 5 Allen, 530. 6 Allen, 113.

SECT. 18. If it appears to the satisfaction of the judge that the debts due from the applicant amount to not less than two hundred dol-  
lars, he shall forthwith issue a warrant under his hand to the sheriff of the county or either of his deputies, directing hi  
senger to take possession of all the estate real  
debtor, except such as may be by law exempt from

all his deeds, books of account, and papers, and keep the same safely until the appointment of an assignee; to publish notice in such newspapers as the warrant specifies, send written notice by mail or otherwise to all creditors upon the schedule furnished him by the debtor, and to give such personal or other notice to any persons concerned as the warrant prescribes; which notice shall state:—

First. That a warrant has issued against the estate of the debtor:

Second. That the payment of any debts, and the delivery of any property belonging to such debtor, to him or for his use, and the transfer of any property by him, are forbidden by law:

Third. That a meeting of the creditors of the debtor to prove their debts and choose one or more assignees of his estate, will be held at a court of insolvency to be holden at a time and place designated in the warrant, not less than ten nor more than sixty days after the issuing of the same.

SECT. 19. The messenger shall as soon as may be demand and receive from the debtor and other persons all the estate in his or their possession respectively, which is herein ordered to be assigned, with all the deeds, books of account, and papers, of the debtor, relating thereto.

SECT. 20. Upon demand made by the messenger under the preceding section, the debtor shall forthwith deliver to him such part of the estate and other things demanded as is within his possession or power, and shall disclose the situation of such parts thereof as are in the possession of any other person, so as to enable the messenger to demand and receive the same. The debtor shall also within three days after the date of the warrant make and deliver to the messenger a schedule, containing a full and true account of all his creditors, with the place of residence of each creditor, if known to the debtor, and the sum due to each of them. The schedule shall also set forth the nature of each debt, whether founded on written security, account, or otherwise, and also the true cause and consideration thereof, and a statement of any existing mortgage, pledge, or other collateral security, given for the payment of the same.

SECT. 21. When it appears to the satisfaction of the judge that the estate of the debtor or any part thereof is of a perishable nature, or likely to deteriorate in value before an assignee can be appointed, he may order the same to be sold in such manner as he deems expedient, under the direction of the messenger, who shall hold the funds received, in place of the estate disposed of.

SECT. 22. At the meeting held in pursuance of the notice the messenger shall make return of the warrant and of his doings thereon, and deliver to the register the schedule of creditors received from the debtor; and at the same meeting, or within such further time as the court may, for cause shown, allow therefor, the debtor shall deliver to the register a schedule of all his real and personal estate, giving a description of the same and stating where it is situated.

SECT. 23. If it appears to the judge that the notice to the creditors required by section eighteen has not been given, he shall forthwith adjourn the meeting and order such notice.

SECT. 24. If the debtor dies after the issuing of the warrant, the proceedings shall be continued and concluded in like manner and with like validity and effect as if he had lived.

#### DEBTS AND PROOF OF CLAIMS.

SECT. 25. Debts due and payable from the debtor at the time of the first publication of the notice of issuing the warrant may be proved and allowed against his estate at any meeting; and all debts at that time

1846, 168, § 4.  
1848, 304, §§ 6, 8.  
1850, 319.  
1851, 138, § 1.  
1854, 329, § 4.  
2 Met. 265.  
4 Met. 403.  
12 Met. 464.  
7 Cush. 144.  
8 Gray, 245.

Messenger to receive debtor's property.  
1838, 163, § 6.  
12 Met. 464.  
2 Cush. 48.  
8 Gray, 245.  
8 Allen, 20, 184.  
Debtor to deliver property and schedule.  
1838, 163, § 6.  
1848, 304, § 8.  
1854, 329, § 3.  
2 Met. 263, 578.  
8 Met. 75.  
9 Met. 292.  
8 Cush. 375.  
8 Gray, 250.  
1 Allen, 115.  
See 1862, 179.

Perishable, &c., property may be sold before appointment of assignee.  
1848, 304, § 15.

First meeting. Return of warrant.  
Schedules.  
1838, 163, § 2.  
1841, 124, § 2.  
1854, 329, § 3.  
8 Cush. 375.  
See 1862, 179.

If no notice, meeting adjourned.  
1848, 304, § 8.

If debtor dies, proceedings to continue.  
1838, 163, § 5.

What debts and demands may be proved.  
1838, 163, §§ 2, 3, 7, 12, 18.

absolutely due, although not payable, may be proved and allowed as if payable, with a discount or rebate of interest when no interest is payable by the contract. Moneys due on any bottomry or respondentia bond or policy of insurance may be proved and allowed, if the contingency or loss happens before the making of the first dividend, in like manner as if the same had happened before the first publication of the notice. If the debtor is liable for any debt in consequence of having made or indorsed a bill of exchange or promissory note before said first publication, or in consequence of the payment by any party to a bill or note of any part of the money secured thereby, or of the payment of any sum by a surety of the debtor in any contract, if the payment is made before the making of the first dividend, such debt may be proved and allowed as if it had been due and payable by the debtor before the first publication. All demands against the debtor for or on account of goods or chattels wrongfully obtained, taken, or withheld, by him, may be proved and allowed as debts, to the amount of the value thereof. No debt other than those above mentioned shall be proved or allowed against the estate.

SECT. 26. If it appears that there has been mutual credit given by the debtor and any other person, or mutual debts between them, the account between them shall be stated, and one debt set off against the other, and the balance shall be allowed or paid on either side.

SECT. 27. When a creditor has a mortgage or pledge of real or personal estate of the debtor, or a lien thereon, for securing the payment of a debt claimed by him, the property so held as security shall, if he requires it, be sold, and the proceeds applied towards the payment of his debt, and he shall be admitted as a creditor for the residue. The sale shall be made in such manner as the judge orders, and the creditor and assignee respectively shall execute all deeds and papers necessary or proper for effecting the conveyance. If the creditor does not require such sale and join in effecting the conveyance, he may release and deliver up to the assignee the premises held as security and be admitted as a creditor for the whole of his debt. If the property is not so sold, or released and delivered up, the creditor shall not be allowed to prove any part of his debt.

SECT. 28. No debt shall be proved or allowed unless the creditor, or if he resides in a foreign country and the debt is founded on a contract made by the debtor with the consignee or agent of the creditor residing in the United States, such consignee or agent, makes oath in substance as follows:—

I, \_\_\_\_\_, do swear that \_\_\_\_\_, of \_\_\_\_\_, by (or a \_\_\_\_\_) in insolvency have been instituted, at and before the date of \_\_\_\_\_, still is, justly and truly indebted to me in the sum of \_\_\_\_\_, part thereof I have not, nor has any other person to my use, lief, received any security or satisfaction whatever, beyond what is agreeable to law. And I do further swear, that said claim for the purpose of influencing the proceedings in this case, that I have not, directly or indirectly, made or entered into \_\_\_\_\_ or agreement, express or implied, to sell, transfer, or dispose of my claim, against said debtor, nor have, directly or indirectly, made or entered into any bargain, arrangement, or agree to take or receive, directly or indirectly, any money, property, or benefit, to myself, or to any person or persons to my use or for the understanding or agreement, express or implied, whereby my assent to the debtor's discharge, is or shall be in any way controlled, or whereby the proceedings in this case are or shall be controlled.

No claim shall be allowed unless all the statements made in the oath are true.

SECT. 29. If the creditor is disabled by absence, illness, or other cause, from proving his claim, the

made by his agent or attorney testifying to the best of his knowledge and belief; in which case the judge may require such further proof of the truth of the statements therein as he deems expedient. 1852, 189, §§ 1, 2.

SECT. 30. The oath may be made before a justice of the peace; but the judge may at any time require the personal appearance in court of the party making such affidavit, to be further interrogated on oath. The debtor and any party proving a debt may be examined on oath in presence of the judge on all matters relating thereto. Oath may be before a justice of the peace. 1838, 163, § 4. 1853, 93, § 9.

SECT. 31. When a claim is presented for proof before the election of the assignee, and the judge entertains doubts of its validity or of the right of the creditor to prove it, and is of opinion that such validity or right ought to be investigated by the assignee, he may postpone the proof of the claim till after the assignee is chosen. Certain claims may be postponed. 1856, 284, § 33. 16 Gray, 137.

SECT. 32. A person who has since the sixth day of July eighteen hundred and fifty-six accepted any preference, having reasonable cause to believe that the same was made or given by the debtor contrary to any provision of this chapter, shall not prove the debt or claim on account of which the preference was made or given, nor receive any dividend thereon. Claims in certain cases not to be allowed. 1838, 163, § 10. 1856, 284, § 32. 11 Allen, 563.

SECT. 33. The judge shall allow all debts duly proved, and shall cause a list thereof to be made and certified by the register; and any creditor may act at all meetings by his duly constituted attorney the same as though personally present. Debts proved. Creditor may act by attorney. 1838, 163, §§ 2, 15.

SECT. 34. A supposed creditor whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim, may appeal from the decision to the superior court; but no appeal shall be allowed unless it is claimed and notice thereof given to the register, to be entered with the record of the proceedings, and also to the assignee or creditor, as the case may be, within ten days after the decision appealed from. The appeal shall be entered at the term of the superior court which shall be first held within or for the county next after the expiration of fourteen days from the time of claiming the same. But if the appellant in writing waives his appeal before the entry thereof, proceedings may be had in the court of insolvency as if no appeal had been taken. Appeal from judge's decision on claims. Entry of appeal. 1838, 163, § 4. 1859, 193. 7 Met. 85. 9 Met. 291. 12 Met. 464. 2 Cush. 371. 4 Cush. 270. 5 Cush. 615. 6 Cush. 23. 1 Gray, 584. 3 Gray, 116. 11 Gray, 134. 16 Gray, 137. 1 Allen, 403. 11 Allen, 563.

SECT. 35. Upon entering the appeal the creditor shall file in court a statement in writing of his claim, setting forth the same substantially as in a declaration for the same cause of action at law, and the assignee shall plead or answer thereto in like manner; and like proceedings shall be thereupon had in the pleadings, trial, and determination of the cause, as in an action at law commenced and prosecuted in the usual manner; except that no execution shall be awarded against the assignee for the amount of a debt found due to the creditor. Proceedings on appeal. 1838, 163, § 4.

SECT. 36. The final judgment of the court shall be conclusive; and the lists of debts shall, if necessary, be altered to conform thereto. The party prevailing in the suit shall be entitled to costs against the adverse party, to be taxed and recovered as in suits at law; if recovered against the assignee they shall be allowed out of the estate. Judgment on appeal. Costs. 1838, 163, § 4. 7 Met. 85.

SECT. 37. A bill of exchange, promissory note, or other instrument, used as evidence upon the proof of a claim and left in court or deposited in the office, may be delivered by the register to the person who used it, upon his filing a copy thereof attested by the register; the register also indorsing upon it the name of the party against whose estate it has been proved, and the date and amount of any dividend declared thereon. Evidence of claims may be withdrawn by leaving copy attested, &c. 1852, 189, § 3.

#### ASSIGNMENT AND ASSIGNEE.

SECT. 38. The creditors shall at the first meeting in the presence of the judge choose one or more assignees of the estate of the debtor; the assignee, choice of, &c. 1838, 163, § 2.

**See 1862, 179, § 2.** choice to be made by the greater part in value of the creditors who have proved their debts: *provided*, that when the number of creditors present amounts to five and less than ten, the votes of two at least, and when the number of creditors amounts to ten or more, the votes of three at least, shall be necessary for a choice. If no choice is made by the creditors at said meeting, the judge shall appoint one or more assignees. If an assignee so chosen or appointed fails, within four days, to express in writing his acceptance of the trust, the judge may fill the vacancy.

**Assignee, judge to approve choice of, &c. ;**  
1868, 141, § 1.

**to give bond,**  
See ;  
1844, 178, § 11.  
1848, 304, § 12.  
4 Gray, 296-298.  
6 Gray, 3-4.  
See Ch' 101.  
See 1862, 179, § 4.

**failing to give bond, to be removed,**  
1868, 118.

**judge to assign property to ;**  
1839, 168, § 5.  
9 Allen, 151.  
97 Mass. 258.

**to record assignment and give notice.**  
1839, 168, § 11.  
5 Allen, 126.

**Effect of assignment.**  
1839, 168, § 5.  
**What to vest.**  
2 Met. 258.  
3 Met. 139, 305, 522.  
4 Met. 137, 348, 587.  
5 Met. 49, 582.  
6 Met. 498, 537.  
7 Met. 164, 349, 424. 8 Met. 19.  
13 Met. 17.  
2 Cush. 480.  
4 Cush. 32, 532.  
5 Cush. 422.  
6 Cush. 30, 87.  
7 Cush. 203, 586.  
10 Cush. 92.  
8 Gray, 245, 392, 398.

**Attachments, how preserved.**  
1841, 124, § 5.  
1865, 66.  
1867, 247.  
4 Met. 470.  
13 Met. 200.  
2 Cush. 124.  
3 Cush. 318.  
4 Gray, 120, 429.  
6 Gray, 112, 522.  
2 Allen, 187.  
5 Allen, 452.

**SECT. 39.** All elections of assignee shall be subject to the approval of the judge; and when in his judgment it is for any cause needful or expedient he may appoint additional assignees or order a new election.

**SECT. 40.** The judge at any time may, and upon the request filed in writing of any creditor who has proved his claim shall, require the assignee to give good and sufficient bond to the judge and his successors in office, with a condition for the faithful performance and discharge of his duties. The bond shall be approved by the judge by his indorsement thereon, shall be filed with the record of the case, and inure to the benefit of all creditors proving their claims, and may be prosecuted in the manner provided for the prosecution of administration bonds.

**SECT. 41.** If the assignee fails to give the bond within such time as the judge orders, not exceeding ten days after notice to him of such order, the judge shall remove him and appoint another in his place.

**SECT. 42.** The judge shall, by an instrument under his hand, assign and convey to the assignee all the estate real and personal of the debtor, except such as is by law exempt from attachment, with all his deeds, books, and papers relating thereto.

**SECT. 43.** The assignee shall forthwith cause the assignment to be recorded in the registry of deeds in each district or county in which there may be real estate of the debtor on which it may operate; and shall give such public notice of his appointment as the judge shall order.

**SECT. 44.** The assignment shall vest in the assignee all the property of the debtor real and personal which he could have lawfully sold, assigned, or conveyed, or which might have been taken on execution upon a judgment against him, at the time of the first publication of the notice of issuing the warrant, although the same is then attached on meane process as the property of the debtor; and shall be effectual to pass all said estate, and, subject to the provisions of the following section, to dissolve any such attachment. The assignment shall vest in the assignee all debts due to the debtor or any person for his use, and all liens and securities therefor, and all his rights of action for goods or estate real or personal, and all his rights of redeeming such goods or estate. The assignee may redeem all mortgages, conditional contracts, pledges, and liens, of or upon any goods or estate of the debtor, or sell the same subject to such mortgage or other incumbrance.

9 Gray, 42.	98 Mass. 306.	5 Cush. 442.	8 Met. 251, 416.	2 Cush. 124.	10 Allen, 258.
11 Gray, 222.	100 Mass. 458.	6 Cush. 114, 362.	4 Met. 298, 470.	3 Cush. 306, 318.	18 Allen, 68.
14 Gray, 150.	102 Mass. 477.	6 Gray, 248.	481, 504.	4 Cush. 351.	Time of voting.
2 Allen, 264.	Rights of action.	7 Gray, 242, 589.	6 Met. 299, 493.	398, 441.	2 Met. 258.
5 Allen, 392.	2 Met. 549.	Dissolution of	7 Met. 318.	10 Cush. 317.	4 Met. 344.
8 Allen, 93, 184.	3 Met. 522.	attachment.	8 Met. 29.	8 Gray, 245.	6 Met. 137.
587.	6 Met. 587.	21 Pick. 169.	9 Met. 23.	11 Gray, 21.	7 Met. 315.
10 Allen, 460.	2 Cush. 494.	22 Pick. 450.	18 Met. 200, 535.	8 Allen, 20.	3 Cush. 26.

**SECT. 45.** If a debtor whose property is attached, conveys before judgment and execution in the suit any part of such property, and subsequently thereto and before execution issues, commenced by or against him as an insolvent debtor, an attachment under the preceding section might attached from passing to the assignee, the judge lings in insolvency are pending, or the court to attachment is returnable, may upon application : day of the third meeting of creditors by any I



cause shown thereon, order the lien created by the attachment to continue. The action may be continued or execution stayed until the assignee is chosen and takes charge of the action. The assignee may proceed with the action and levy the execution at the cost and expense of the estate; and the amount recovered exclusive of costs due to the original plaintiff shall vest in the assignee.

SECT. 46. The assignee shall demand and receive from the messenger and all other persons, all the estate in his or their possession assigned or intended to be assigned under the provisions of this chapter; and he shall sell all such estate, real and personal, which comes to his hands, on such terms as he thinks most for the interest of the creditors; but upon petition of any person interested and for cause shown, the court may make such order concerning the time, place, or manner of sale, as will in its opinion promote the interests of the creditors; and the assignee shall keep a regular account of all money received by him as assignee, to which every creditor shall at reasonable times have free resort.

SECT. 47. He shall have the like remedy to recover all said estate, debts, and effects, in his own name, as the debtor might have had if no assignment had been made. If at the time of the assignment an action is pending in the name of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall, if he requires it, be admitted to prosecute the action in his own name, in like manner and with like effect as if it had been originally commenced by him. No suit pending in the name of the assignee shall be abated by his death or removal; but upon the motion of the surviving, remaining, or new assignee, as the case may be, he shall be admitted to prosecute the suit in like manner and with like effect as if it had been originally commenced by him. In suits prosecuted by the assignee, the assignment made by the judge shall be conclusive evidence of his authority to sue.

SECT. 48. Drafts, bills of exchange, promissory notes, claims, demands, and causes of action, which subsequently to the sixth day of July in the year eighteen hundred and fifty-six, and within six months before the filing of the petition by or against a debtor, are assigned, transferred, conveyed, or delivered, to any person indebted or liable to the debtor, shall not be offset or pleadable in defence in any suit by the assignee to recover such debt or liability; but the assignee may recover the same notwithstanding such draft, bill of exchange, promissory note, claim, demand, or cause of action: *provided*, that the person to whom the same are so assigned, transferred, conveyed, or delivered, had at the time of such assignment, transfer, conveyance, or delivery, reasonable cause to believe the debtor insolvent.

SECT. 49. The assignee shall as soon as may be after receiving any money belonging to the estate, deposit the same in some bank, in his name as assignee, or otherwise keep it distinct and apart from all other money in his possession; and shall as far as practicable keep all goods and effects belonging to the estate separate and apart from all other goods in his possession, or designated by appropriate marks; so that they may be easily and clearly distinguished, and may not be exposed or liable to be taken as his property or for the payment of his debts.

SECT. 50. When it appears that the distribution of the estate may be delayed by litigation or other cause, the court may direct the temporary investment of the money belonging to such estate in securities to be approved by the judge; or may authorize the same to be deposited in any bank in this state upon such interest, not exceeding the legal rate, as the bank may contract with the assignee to pay thereon.

SECT. 51. He shall give written notice to all known creditors by

Assignee to demand and sell estate, and keep accounts; 1898, 163, § 11. 10 Cush. 173. 102 Mass. 477. See 1861, 104.

to commence and prosecute suits, which shall not abate on his death 1893, 163, § 5. 2 Met. 639. 3 Met. 622. 4 Met. 604. 2 Cush. 434. 5 Cush. 442. 6 Cush. 332. 7 Cush. 536. 8 Gray, 241, 382. 4 Gray, 184. 10 Gray, 215, 329. 1 Allen, 213. 5 Allen, 532. 10 Allen, 36, 490.

Certain drafts, &c., assigned, not to be offset, &c. 1856, 284, § 28. 8 Gray, 572.

Money and property of debtor to be kept separate by assignee; 1893, 163, § 11. See Ch. 57, § 63.

court may direct temporary investment of, when, &c. 1859, 119, § 1.

Assignee to

give notice of meetings;  
1846, 168, § 4.  
1850, 319.

Assignee, compensation of;  
1838, 168, § 11.

may submit controversies to arbitration;  
1838, 168, § 11.  
11 Cush. 682.

may sell perishable property pending dispute of title. Property recovered by action, &c.;  
1858, 78, §§ 1, 2.

to certify and render accounts, when, &c.;  
1844, 178, § 7.  
10 Cush. 172.

removal of, by creditors;  
1838, 168, § 11.  
1850, 69.  
16 Gray, 127.

by judge upon complaint;  
1848, 304, § 12.  
12 Gray, 144.

when out of state, and refusing to obey, &c., or any cause;  
1851, 349, § 2.  
1859, 141, § 1.

may resign;  
1858, 141, § 3.

vacancies in office of, may be filled by appointment or election.

mail or otherwise of all dividends; and such notice of meetings after the first as the judge shall order.

SECT. 52. He shall be allowed, and may retain out of the money in his hands, all the necessary disbursements made by him in the discharge of his duty, and a reasonable compensation for his services, in the discretion of the judge.

SECT. 53. He may, under the direction of the judge, submit any controversy arising in the settlement of demands against the estate, or of debts due to it, to the determination of arbitrators, to be chosen by him and the other party to the controversy; and may under such direction compound and settle any such controversy by agreement with the other party as he thinks proper and most for the interest of the creditors.

SECT. 54. When it appears to the satisfaction of the judge that the title to any portion of an estate which has come into possession of the assignee is in dispute, and that the property is of a perishable nature, or liable to deteriorate in value, he may on the petition of the assignee, and after such notice to the claimant, his agent, or attorney, as the judge deems reasonable, order it to be sold under the direction of the assignee, who shall hold the funds received, in place of the estate disposed of; and the proceeds of the sale shall be considered the measure of the value of the property in any suit or controversy between the parties. But this provision shall not prevent the recovery of the property from the possession of the assignee by action of replevin commenced at any time before the judge orders the sale.

SECT. 55. When an assignee has received from the estate assets sufficient to pay fifty per cent. of the debts and claims proved against it, he shall certify the fact and render his accounts therefor to the judge; and when he has received twenty-five per cent. more from the assets, he shall in like manner certify and render his accounts therefor. He shall also certify and render his accounts at any time when required by the judge.

SECT. 56. At a meeting called by order of the judge in his discretion for the purpose, and which shall be called upon the application of a majority of the creditors either in number or value, the creditors may with the consent of the judge remove any assignee by such a vote as is provided in section thirty-eight for the choice of assignees.

SECT. 57. The judge after due notice and hearing may remove an assignee if it appears to him upon the complaint of any person interested in the estate that the assignee has fraudulently received, concealed, embezzled, or conveyed away, any of the money, goods, effects, or other estate, of the debtor, or has been interested in any suit at law in relation to said estate for the purpose of securing to himself a preference or priority over the other creditors, or has in his possession or control any portion of the estate with intent to appropriate the same unlawfully to his own use, or has been guilty of any fraudulent act in relation to the same.

SECT. 58. He may also remove an assignee who having removed from the state unreasonably refuses or neglects to obey any lawful order for calling meetings of the creditors, to settle his accounts, or otherwise unreasonably refuses or neglects to discharge his duties; and for any other cause which in his judgment renders such removal necessary or expedient.

SECT. 59. An assignee may with the consent of trust and be discharged therefrom.

SECT. 60. Vacancies caused by death or other assignee may be filled by appointment of the judge by an election of the creditors in the manner prescribed at a regular meeting, or at a meeting called

such notice thereof in writing to all known creditors, and by such person, as the judge shall direct.

4 Allen, 562. 9 Allen, 197, 199.

1838, 168, §§ 2, 11.  
1858, 141, §§ 2, 8.

SECT. 61. The resignation or removal of an assignee shall in no way release him from performing all things requisite on his part for the proper closing up of his trust and the transmission thereof to his successors; nor affect the liability of the principal or surety on the bond given by the assignee.

Assignee, effect  
of resignation,  
&c., of;  
1858, 141, § 8.

SECT. 62. When by death or otherwise the number of assignees is reduced, the estate of the debtor not lawfully disposed of shall vest in the remaining assignee or assignees, and the persons selected to fill vacancies, with the same powers and duties relative thereto as if they were originally chosen.

vesting of es-  
tate upon death,  
&c., of;  
1838, 168, § 11.  
1848, 804, § 12.  
1851, 849, § 2.

SECT. 63. Any former assignee, his executors, or administrators, upon request, and at the expense of the estate, shall make and execute to the new assignee all deeds, conveyances, and assurances, and do all other lawful acts, requisite to enable him to recover and receive all the estate; and the judge may pass all orders which he deems expedient to secure the proper fulfilment of the duties of any former assignee, and the rights and interests of all persons interested in the estate.

former to exe-  
cute deeds, &c.  
Judge to pass  
orders for fulfil-  
ment of duties,  
&c., of;  
1838, 168, § 11.  
1851, 849, § 2.  
1858, 141, § 4.

SECT. 64. No person who has received any preference contrary to the provisions of the laws relating to insolvency, shall vote for or be eligible as assignee, but no title to property, real or personal, sold, transferred, or conveyed, by an assignee, shall be affected or impaired by reason of his ineligibility.

preferred  
creditors not to  
vote for, &c. In-  
eligibility not to  
affect titles;  
1856, 294, § 84.

SECT. 65. An assignee refusing or unreasonably neglecting to execute an instrument when lawfully required by the judge, or disobeying a lawful order or decree of the judge in the premises, may be committed to and detained in the jail of the county where he is found, or in which he dwelt when he was appointed, until he obeys such order or decree, or is released by the supreme judicial court or some justice thereof on a writ of habeas corpus.

penalty on, for  
neglect, &c.  
1838, 168, § 23.

#### EXAMINATION, &c., OF DEBTOR.

SECT. 66. The debtor shall at all times before the granting of his certificate, upon reasonable notice, attend and submit to an examination on oath before the judge and the assignee upon all matters relating to the disposal of his estate; to his trade and dealings with others, and his accounts concerning the same; to all debts due or claimed from him; and to all other matters concerning his estate, and the due settlement thereof according to law; which examination shall be in writing when so required by the judge, shall be signed by the debtor and filed with the other proceedings.

Debtor to submit  
to examination;  
1838, 168, § 6.  
2 Met. 578.  
9 Met. 292.  
8 Gray, 115, 250.

SECT. 67. If the debtor is in jail in any suit or proceeding for or on account of any debt or demand that is provable against his estate, at any time before the granting of his certificate and when his attendance is required before the court or the assignee, or at any meeting of his creditors, the judge may, in his discretion, by warrant under his hand require the jailer to produce the debtor for the purposes aforesaid, at a time and place to be specified in the warrant.

examination of,  
when in prison;  
1838, 168, § 9.

SECT. 68. If the debtor by reason of imprisonment, sickness, or any other cause deemed sufficient by the judge, is unable to attend before the judge, or the assignee, or at any meeting of his creditors, the judge, or some person deputed by him for that purpose, and the assignee, or some person appointed by him, shall attend the debtor, in jail or elsewhere, if he is within this state, in order to take his examination; and the examination thus taken shall be of the same force and effect as if the debtor had attended in person before the judge or assignee, or at the meetings aforesaid, and had there undergone the same examination.

when sick or  
unable to attend;  
1838, 168, § 9.

SECT. 69. If the debtor is without this state and unable to return

when out of



assignee; at which meeting or some meeting thereafter, if it appears to the satisfaction of the judge that the debtor has made a full disclosure and delivery of all his estate as herein required, and that he has in all things conformed himself to the directions and requirements of the laws relating to insolvent debtors, the judge shall grant him a certificate, which shall state all fiduciary debts specially exempt from discharge, and be in substance as follows:—

COMMONWEALTH OF MASSACHUSETTS.

ss.

Court of Insolvency.

To all people to whom these presents shall come, I, A. B., judge of the court of insolvency for said county of \_\_\_\_\_, send greeting.

Whereas, it has been made to appear to me, that C. D., of B., in the said county of \_\_\_\_\_, merchant, whose estate has been assigned for the benefit of his creditors, according to law, has made a full disclosure and delivery of all his estate, and that he has in all things conformed himself to the requirements of law in that behalf made and provided: I do accordingly certify that said C. D. is absolutely and wholly discharged from all his debts which have been or shall be proved against his estate assigned as aforesaid, and from all debts which are provable against his estate, and which are founded on any contract made by him within this state or to be performed within the same, and made since the last day of July in the year eighteen hundred and thirty-eight, and from all debts which are provable as aforesaid, and which are founded on any contract made by him since that date, and due to any persons who were resident within this commonwealth on the \_\_\_\_\_ day of \_\_\_\_\_ last, being the day of the first publication of the notice of the warrant issued for the seizure of the estate of said C. D.; and from all demands against him for or on account of any goods or chattels wrongfully obtained, taken, or withheld, by him, according to the provisions of chapter one hundred and eighteen of the General Statutes. And I do further certify that said C. D. is by force of said chapter forever discharged and exempted from arrest or imprisonment in any suit, or upon any proceeding, for or on account of any debt or demand whatever which might have been proved against his estate assigned as aforesaid.

Given under my hand and the seal of said court this \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year

1838, 168,  
\$8 7, 12  
1844, 178, \$ 8.  
1848, 304, \$ 9.  
1 Cush. 87.  
4 Cush. 629.  
7 Cush. 841.  
11 Cush. 855.  
4 Allen, 173.  
7 Allen, 112.  
103 Mass. 23.

Form of certificate of discharge.

SECT. 76. The debtor shall thereupon, except as provided in section seventy-nine, be absolutely and wholly discharged from debts proved against his estate; and from all debts provable under this chapter, and founded on any contract made by him subsequently to the last day of July in the year eighteen hundred and thirty-eight and while an inhabitant of this state, if made within this state, to be performed within the same, or due to any person resident therein at the time of the first publication of the notice of the issuing of the warrant; and from all demands for or on account of any goods or chattels wrongfully obtained, taken, or withheld, by him, as mentioned in section twenty-five, while such inhabitant.

5 Cush. 83, 86, 10 Cush. 43, 523. Contracts out of 7 Cush. 15, 242, 455. 8 Gray, 191.  
444. 1 Gray, 305, 623. state. 10 Cush. 523. 10 Gray, 170. 5 Allen, 10.  
6 Cush. 225. 2 Gray, 43, 111, 10 Met. 594, 597. 2 Gray, 43. 11 Gray, 398, 400. 7 Allen, 112, 468.  
7 Cush. 15, 242, 148. 12 Met. 470. 3 Gray, 551. 18 Gray, 208. 8 Allen, 814.  
456, 592. 3 Gray, 252, 551. 1 Cush. 430. 5 Gray, 487, 589, 1 Allen, 512. 9 Allen, 27.  
8 Cush. 375. 5 Gray, 51, 816. 5 Cush. 88. 552. 2 Allen, 67. 13 Allen, 294.  
4 Cush. 607.

Effect of discharge.  
1838, 163, \$ 7.  
1844, 178, \$ 8.  
1855, 363, \$ 1.  
21 Pick. 172.  
3 Met. 213.  
4 Met. 302.  
6 Met. 299.  
7 Met. 152, 257,  
318, 321, 420,  
424, 431.  
8 Met. 72, 75,  
102, 129.  
10 Met. 332, 392,  
594, 597.  
12 Met. 470.  
13 Met. 62.  
1 Cush. 437.  
2 Cush. 173, 388  
3 Cush. 841.  
4 Cush. 607.

SECT. 77. If the debtor at the time of obtaining his certificate is in jail on any suit or proceeding for or on account of any claim provable against his estate, he shall be discharged from such imprisonment upon producing to the jailer his certificate granted pursuant to the provisions of this chapter.

SECT. 78. The debtor shall also be forever thereafter discharged and exempt from arrest or imprisonment in any suit or upon any proceeding for or on account of any debt or demand which might have been proved against his estate. And the property and estate of the debtor by him acquired subsequently to the time of the first publication of the notice of the issuing of the warrant, shall not be subject to attachment, by trustee process or otherwise, in any suit to recover a debt which may have been so provable and due to any person or persons not resident in this state at the time of such first publication, or founded on any contract existing at the time of said first publication and made or to be performed out of the limits of this state.

111 Mass. 77  
Debtor imprisoned, &c., to be discharged on certificate;  
1838, 163, \$ 9.

discharged from arrest, &c., and property exempt from attachment, &c.  
1838, 163, \$ 7.  
1850, 97.  
7 Met. 257  
8 Met. 102.  
12 Allen, 365.

Debts from defalcation and for necessities not discharged.

1838, 168, § 7.  
1844, 178, § 8.  
1848, 804, § 10.  
10 Cush. 48.  
See Ch. 90, § 29.  
11 Cush. 442.  
8 Gray, 227.  
9 Gray, 211.

Furities, &c.  
1838, 168, § 7.  
5 Cush. 614.  
1 Gray, 623.

Discharged by assent of creditors;  
1848, 804, § 9.  
8 Cush. 109.  
10 Cush. 43.  
1 Gray, 623.  
2 Gray, 519.  
8 Gray, 254.

upon second and third insolvency.  
1844, 178, §§ 5, 6.  
1856, 257.  
5 Cush. 63.  
8 Cush. 104.  
10 Gray, 827.  
13 Gray, 208.

Creditors may assent whose claims are appealed, &c.  
1852, 263.  
8 Gray, 255.

Debtor failing by accident, &c., to take oath, may be discharged.  
1853, 121.

Appeal from decision of judge on question of discharge.

1838, 168, § 8.  
1848, 804, § 11.  
1859, 196.  
11 Gray, 184.  
7 Allen, 112.

Proceedings on appeal.  
1839, 168, § 8.  
1859, 196.  
See 1864, 254.

SECT. 79. A debt created subsequent in the year eighteen hundred and forty as a public officer, executor, administrator or assignee of an insolvent estate, shall be a debt of said chapter, but the dividend declared thereon of said debt. A claim for necessities of family shall not be so discharged unless estate. 1 Allen, 219, 456. 5 Allen, 210. 7 A

SECT. 80. A discharge shall not render liable for the same debt as a partner, or otherwise, for or with the debtor.

SECT. 81. A discharge shall not be do not pay fifty per cent. of the claims the assent in writing of a majority in number who have proved their claims is filed in the date of the assignment. 91

SECT. 82. A discharge shall not be time insolvent whose assets do not prove proved against his estate, unless the value in value of his creditors who have proved case within six months after the date of shall be granted to a debtor a third time has paid all the debts owing by him insolvency, or who has been voluntarily released shall be entitled to a discharge in the effect as if he had not been previously

SECT. 83. A creditor may assent to two preceding sections, notwithstanding of his claim is pending, and such assent finally allowed.

SECT. 84. When a discharge is refused that the assent of the requisite majority seasonably obtained or filed, or for the oath required by section seventy-two, of the debtor made within twelve months and with the written assent of three of the creditors who have proved their if he satisfies the judge on a hearing his application that the failure to obtain or accident or mistake, and by no fault of to take the oath was owing to his inability tend and take the same; and if he is abides and performs all lawful orders of

SECT. 85. Either the debtor or the after the decision of the judge upon the certificate of discharge, and not after, upon be entered with the record of proceedings the term of the superior court which is the county next after the expiration of claiming the appeal. But if the appeal before the entry thereof in the superior in the court of insolvency, as if no appeal

SECT. 86. The appeal may be heard court or any justice thereof; and the appellant may appear and object to the allowance of the finding of the parties it appears to the court the debtor has made a full disclosure and disclosed required, and that he has in all things complied of this chapter, the court shall cause a

like that prescribed in section seventy-five, to be made under the seal of the court, signed by the clerk, and delivered to the debtor.

MATTERS AVOIDING DISCHARGE.

SECT. 87. A discharge shall not be granted, or valid, if the debtor has wilfully sworn falsely as to any material fact in the course of the proceedings, or if he has fraudulently concealed any part of his estate, or effects, or any books or writings relating thereto; or if, being insolvent and having reasonable and sufficient cause to believe himself so, he has, within one year next before the filing of a petition by or against him, paid or secured, either directly or indirectly, in whole or in part, any borrowed money, or preëxisting debt, or any liability of his or for him; or if, within six months before the filing the petition by or against him, he has procured his lands, goods, money, or chattels to be attached, sequestered, or seized on execution; or if, subsequently to the sixth day of July eighteen hundred and fifty-six, he has destroyed, altered, mutilated, or falsified any of his books, documents, papers, writings, or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document with intent to defraud his creditors; or has removed himself, or removed or caused to be removed any part of his property, from the state, with intent to defraud his creditors; or has made any fraudulent payment, gift, transfer, conveyance, or assignment of any part of his property, or spent any part thereof in gaming; or if, having knowledge that any person has proved a false debt against his estate, he has not disclosed the same to his assignee within one month after such knowledge; or if, being a merchant or tradesman, he has not subsequently to said date kept proper books of account. And the discharge shall be null and void, if the debtor, or any person in his behalf, shall have procured the assent of any creditor thereto by any pecuniary consideration.

Discharge forfeited by proceedings in fraud of creditors.  
1838, 163, § 10.  
1841, 124, § 3.  
1844, 178, § 8.  
1848, 244, § 9.  
1856, 284, § 31.  
1858, 54.  
3 Met. 218.  
7 Met. 164, 281, 420.  
8 Met. 377, 490.  
2 Cush. 480.  
7 Cush. 138, 146.  
8 Cush. 103, 377, 381.  
10 Cush. 545.  
3 Gray, 594.  
Who may contest.  
7 Met. 422.  
13 Met. 62.  
8 Cush. 377.  
6 Gray, 327.  
See § 90.  
12 Cush. 597.  
11 Gray, 136, 190.  
5 Allen, 124.  
6 Allen, 327, 567.  
11 Allen, 555, 563.  
See 1855, 225.

SECT. 88. If any person, in contemplation of becoming insolvent and of obtaining a discharge in insolvency, makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is or may be under any liability for him, or for the purpose of preventing the property from coming to the hands of his assignee in insolvency, or of being distributed under the laws relating to insolvency in satisfaction of his debts, except as provided in section ninety, he shall not be entitled to a discharge, and any discharge received by him shall be void and of no effect.

Fraudulent preferences avoid a discharge.  
1838, 163, § 10.  
1841, 124, § 3.  
1856, 284, § 25.  
8 Met. 62, 67, 377.  
7 Cush. 146.  
See § 90.  
5 Allen, 109.

PREFERENCES.

SECT. 89. If any person, being insolvent or in contemplation of insolvency, within six months before the filing of the petition by or against him, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefited thereby, having reasonable cause to believe such person is insolvent or in contemplation of insolvency, and that such payment, pledge, assignment, or conveyance is made in fraud of the laws relating to insolvency, the same shall be void; and the assignees may recover the property, or the value of it, from the person so receiving it or so to be benefited.

Fraudulent payments void, &c.  
1838, 163, § 10.  
1841, 124, § 3.  
1856, 284, § 25.  
25 — 1 Met. 386.  
4 Met. 137.  
5 Met. 49.  
7 Met. 164, 520.  
8 Met. 377, 496.  
9 Met. 232, 489.  
13 Met. 167, 484.  
1 Cush. 170.  
2 Cush. 160, 480.  
8 Cush. 169.  
7 Cush. 133, 181.  
10 Cush. 545.  
8 Gray, 541, 596.  
4 Gray, 111.  
6 Gray, 100, 324.  
See § 90.  
12 Cush. 357.  
13 Gray, 18.

1 Allen, 110.      3 Allen, 82.      8 Allen, 451.      11 Allen, 97, 555.  
2 Allen, 18, 448.      5 Allen, 124.      10 Allen, 491.      13 Allen, 182.

97 Mass. 342.  
See 1855, 225.

Preceding sections not to apply to necessities.  
1858, 284, § 25.  
See Ch. 90, § 29.

Sales, &c., to prevent property from coming to assignee, &c., void.  
1858, 284, § 27.  
8 Met. 62, 67, 377.  
7 Cush. 148.  
18 Gray, 18.  
2 Allen, 20.  
8 Allen, 32, 114.  
8 Allen, 308.  
8 Allen, 451.  
9 Allen, 482.  
10 Allen, 491.  
11 Allen, 97.  
13 Allen, 178, 182.  
99 Mass. 612.

SECT. 90. The provisions of the apply to any payment of money, not exceeding twenty-five dollars in amount, upon a bill of exchange for necessities furnished to the debtor or his family.

SECT. 91. If any person, being insolvent or in contemplation of insolvency, within six months before the filing of the petition by or against him, makes any sale, assignment, transfer, or other conveyance of any description, of any part of his property, to any person who then has reasonable cause to believe such person insolvent or in contemplation of insolvency, and that such sale, assignment, transfer, or other conveyance is made with a view to prevent the property from coming to his assignee in insolvency, or to prevent the same from being distributed under the laws relating to insolvency, or to defeat the object of, or in any way impair, hinder, impede, or delay the operation and effect of, or to evade, any of said provisions, the sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property or the value thereof as assets of the insolvency. And if such sale, assignment, transfer, or conveyance is not made in the usual and ordinary course of business of the debtor, that fact shall be prima facie evidence of such cause of belief.

#### ALLOWANCE AND SURPLUS.

Allowance to debtor:  
1838, 163, §§ 6, 8.  
8 Cush. 109.  
See § 111.

SECT. 92. The debtor shall receive from the assignee one dollar a day for his attendance on the judge or the assignee when required under section sixty-six. He shall also be allowed out of his estate, for the necessary support of himself and his family, such sum, not exceeding the rate of three dollars per week for each member of his family, and for such time, not exceeding two months, as the judge may order. And every debtor who is discharged shall be allowed five per cent. on the net produce of all his estate received by the assignee, if such net produce, after such allowance, is sufficient to pay the creditors entitled to a dividend the amount of fifty per cent. on their debts; but the allowance shall not exceed in the whole the sum of five hundred dollars.

In case of death.  
1838, 163, § 5.

SECT. 93. If an allowance to the debtor estate becomes due and is not paid to him in his his executors or administrators, and disposed manner as any other property of which he ma of his decease.

Surplus to be returned to debtor.  
1838, 163, § 13.  
6 Met. 203.

SECT. 94. If after the payment of all c remains in the hands of the assignee, it shall or re-vest in, the debtor or his legal represent

#### ACCOUNTS AND DIVIDEND

Assignee to exhibit accounts.  
Dividends.  
1838, 163, § 12.  
10 Cush. 178, 496.  
8 Allen, 318.  
See 1861, 104.  
1862, 68, § 1.  
1862, 179, § 6.  
Preferred claims.  
1838, 163, § 12, 24.  
1841, 124, § 6.  
1850, 218.  
1858, 119, §§ 1, 2.  
11 Met. 234.  
2 Cush. 178, 371.  
See 1862, 188, § 11.

SECT. 95. At the third meeting the ass judge and creditors present, fair and just acco payments touching the estate, and shall, if examined on oath as to the truth of such thereupon order a dividend of the estate as thereof as he deems fit, among such of the cre claims, in proportion to their respective debts

SECT. 96. In the order for a dividend u the following claims shall be entitled to prio be first paid in full in their order:

First. All debts due to the United States taxes assessed by this state:

Second. Wages due to any operative to



fifty dollars for labor performed within one year next preceding the first publication of the notice of insolvency, or for labor for the recovery of payment for which a suit commenced within one year after the performance thereof is pending, or has terminated within one year from said first publication :

Third. All debts due to physicians for medical attendance on the debtor or his family, rendered within six months prior to the institution of proceedings in insolvency, to an amount not exceeding fifty dollars :

Fourth. All debts due to any persons who by the laws of the United States, or of this state, are or may be entitled to a priority or preference in like manner as if this chapter had not been enacted :

Fifth. Legal fees, costs, and expenses, of suit, and for the custody of the property proved as preferred under section one hundred and twenty-seven. See 1862, 179, § 5.

SECT. 97. If at the time of ordering the dividend it appears probable that there are just claims against the estate which by reason of the distant residence of the creditor or for other sufficient reason have not been proved, the judge shall in ordering the dividend leave in the hands of the assignee a sum sufficient to pay every such absent creditor a proportion equal to what shall be then paid to the other creditors, which sum shall remain thus unappropriated in the hands of the assignee until the final dividend is declared, or until the judge orders its distribution. Reservation for absent creditors. 1838, 168, § 12. 20 Pick. 312.

SECT. 98. The assignee shall, at such time as the judge directs within eighteen months after the appointment of the assignee, make a second dividend of the estate, if the same was not wholly distributed upon the first dividend, and shall give notice of a meeting of all the creditors of the debtor for that purpose. At such meeting the accounts of the assignee shall be produced and examined as provided in section ninety-five, and settled by the judge ; and any balance appearing to be in the hands of the assignee, shall, by order of the judge, be divided among all the creditors who have proved their debts, in proportion thereto. Second dividend. Assignees' accounts. 1838, 168, § 13. 7 Met. 348. 20 Pick. 312.

SECT. 99. If at any time before the final dividend there remain in the hands of the assignee any outstanding debts or other property due or belonging to the estate which cannot in the opinion of the judge be collected and received by the assignee without unreasonable or inconvenient delay, the assignee may, under the direction of the judge, sell and assign such debts or other property in such manner as the court shall order. Outstanding debts, &c., may be sold. 1838, 168, § 13.

SECT. 100. Suits upon claims sold by assignees shall be brought in the name of the purchasers. The fact of sale and of purchase by the plaintiff shall be set forth in the writ, and the defendant may avail himself of any matter of defence of which he could have availed himself in a suit upon the claim by the assignee. Costs in such suits shall be recovered by or against the plaintiff, and the assignee shall not be liable therefor. Suits on claims sold by assignees. Costs. 1859, 194. 12 Cush. 282. 8 Allen, 99.

SECT. 101. Such second dividend shall be final unless a suit relating to the estate is then depending, or part of the estate is outstanding, or unless some other estate or effects of the debtor afterwards come to the hands of the assignee ; in which cases another dividend shall be made by order of the judge. Further dividends shall be made in like manner as often as occasion requires. Further dividends if necessary. 1838, 168, § 13. 7 Met. 348.

SECT. 102. No creditor whose debt is proved at the time of the second or any subsequent dividend shall disturb any prior dividend, but he shall be paid so far only as the funds remaining unappropriated in the hands of the assignee are sufficient therefor. Former dividends not to be disturbed. 1838, 168, § 13. 20 Pick. 312.

## APPLICATIONS BY CREDITORS.

by 19. SECT. 103. If any person arrested on mesne process in a civil action  
 19. for the sum of one hundred dollars or upwards, founded upon a demand  
 19. in its nature provable against the estate of an insolvent debtor, has not  
 2. given bail therein on or before the return day of such process; or has been  
 125. actually imprisoned for more than thirty days, in any civil action founded  
 on such contract, for the sum of one hundred dollars or upwards; or if  
 04. any person whose goods or estate are attached on mesne process in any  
 21. civil action founded on such contract, for the sum of one hundred dol-  
 22. lars or upwards, has not within seven days from the return day of such  
 process dissolved the attachment in the manner provided in chapter one  
 hundred and twenty-three; or if any person has removed himself or  
 any part of his property from the state, with intent to defraud his cred-  
 itors; or has concealed himself to avoid arrest, or any part of his prop-  
 erty to prevent its being attached, or taken on a legal process; or pro-  
 1. cured himself or his property to be arrested, attached, or taken, on any  
 legal process; or made any fraudulent payment, conveyance, or transfer,  
 of any part of his property; any of his creditors whose claims provable  
 against his estate amount to the sum of one hundred dollars, may, within  
 ninety days thereafter, apply by petition to the judge for the county in  
 which the debtor resides, or, in case the debtor has ceased to reside in  
 this state within one year next before the commencement of proceedings  
 against him, in the county in which he last had his residence, setting  
 forth the facts and the nature of such claims, verified by oath, and pray-  
 ing that his estate may be seized and distributed according to the pro-  
 visions of this chapter.

200. SECT. 104. The judge, after notice of the petition given to the debtor  
 by a copy thereof served upon him personally or left at his last and  
 19. usual place of abode, and a hearing before him of the petitioner and  
 debtor, or a default by the debtor to appear in pursuance of said notice,  
 if the facts set forth in the petition appear to be true, shall forthwith  
 issue his warrant to take possession of the estate of the debtor. The  
 warrant shall be directed, and the property of the debtor shall be there-  
 on taken and distributed, in the same manner and with similar proceed-  
 ings to those herein provided for the taking possession and distribution  
 of the property of a debtor upon his own petition.

it is 1. SECT. 105. When a person by accident or mistake has failed to dis-  
 1. solve an attachment within the time required by section one hundred  
 1. and three, he may forthwith apply by petition to the judge before whom  
 1. proceedings against him are pending, for a stay of the proceedings, and  
 2. after such notice to the petitioning creditor as the judge orders, or with-  
 out notice if the urgency of the case does not allow notice to be given.  
 the proceedings may be stayed by an order of the judge until a hearing;  
 and if upon the hearing he proves to the satisfaction of the judge that  
 he is in fact solvent, or that for any other cause the proceedings ought  
 to be stayed, the judge shall order the proceedings to be stayed and  
 finally suppressed.

## CONCEALMENT OF PROPERTY, &amp;c.

by 200. SECT. 106. If a debtor after notice of the filing of a petition by or  
 20. against him secretes or conceals any property belonging to his estate,  
 or any books, deeds, documents, or writings, relating thereto, or re-  
 moves or causes to be removed the same or  
 state, or otherwise disposes of any part the  
 it from coming to the possession of the re-  
 hinder, impede, or delay either of them in  
 same; or makes any payment, gift, sale, or  
 any property belonging to his estate; or

gaming or otherwise, except such parts as may reasonably be expended for the support of himself and his family, not exceeding the amount allowable by law; he shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding two years.

SECT. 107. A judge before whom proceedings are pending in relation to the estate of a debtor may, upon the complaint under oath of any person interested therein, against any one suspected of having fraudulently received, concealed, embezzled, or conveyed away, any money, goods, effects, or other estate, of the debtor, cite the suspected person to appear before him and be examined on oath upon the matter of the complaint. If the person cited refuses to appear and submit to such examination or to answer such interrogatories as are lawfully propounded to him, the judge may commit him to the jail of the county, there to remain in close custody until he submits to the order of the court. All such interrogatories and answers shall be in writing, signed by the party examined, and filed in court.

Proceedings  
against persons  
fraudulently  
concealing, &c.  
property, &c.;  
1848, 168, § 1.  
4 Cush. 448.  
9 Allen, 578.  
11 Allen, 439.  
99 Mass. 470.

#### PARTNERSHIPS.

SECT. 108. When two or more persons who are partners become insolvent, a warrant may be issued as provided in this chapter, by the judge in whose county either of the partners resides, upon the petition of one or more of the partners, (reasonable notice being first given by the judge to the other partners, if within the state, to show cause why its prayer should not be granted,) or upon the petition of any creditor of the partners; upon which warrant all the joint stock and property of the company and the separate estate of each of the partners shall be taken, except such parts as may be by law exempt from attachment; and all the creditors of the company, and the separate creditors of each partner, may prove their respective debts.

SECT. 109. The assignee shall be chosen by the creditors of the company; and shall keep separate accounts of the joint stock, or property of the company, and of the separate estate of each member thereof; and after deducting out of the whole amount received by him the total expenses and disbursements paid, the net proceeds of the joint stock shall be appropriated to pay the creditors of the company, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors. If there is any balance of the separate estate of a partner after the payment of his separate debts, it shall be added to the joint stock for the payment of the joint creditors. If there is a balance of the joint stock after the payment of the joint debts, it shall be divided and appropriated to and among the separate estates of the several partners according to their respective rights and interests therein, and as it would have been if the partnership had been dissolved without insolvency; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts.

SECT. 110. The provisions of the two preceding sections shall apply to limited partnerships formed under chapter fifty-five, or under chapter thirty-four of the Revised Statutes, when such partnerships become insolvent; but the separate estates and separate debts of the special partners shall not be subject to the proceedings against the partnership.

SECT. 111. In all proceedings against partners each shall be entitled to allowance as herein before provided for the maintenance of himself and his family; and the allowance on the net produce of the estates as provided in section ninety-two, shall be computed on the joint estate, and also on each of the separate estates, as if there had been a separate warrant against each; but neither of the partners shall receive in the whole more than five hundred dollars.

SECT. 112. The certificate of discharge shall be granted or refused

In case of  
partners.  
1838, 168, § 21.  
1856, 284, § 37.  
1858, 98, § 10.  
22 Pick. 450.  
4 Met. 397, 537.  
5 Met. 582, 582.  
12 Met. 1.  
2 Cush. 175.  
4 Cush. 99, 127.  
5 Cush. 224, 618.  
8 Cush. 109, 375.  
9 Cush. 558.  
10 Cush. 458.  
592, 11 Cush. 296.  
3 Gray, 289, 542.  
4 Gray, 120, 122.  
6 Gray, 829.  
Choice of as-  
signee and ad-  
justment of  
joint and sepa-  
rate property  
and debts.  
1838, 168, § 21.  
9 Cush. 653.  
10 Cush. 458, 592.  
4 Gray, 120, 122.  
5 Gray, 674.  
10 Gray, 264, 290,  
298, 582.  
18 Gray, 116, 307,  
466.  
14 Gray, 594.  
8 Allen, 81, 679.  
97 Mass. 257.  
101 Mass. 494.  
See 1865, 113.

Provision in  
case of limited  
partnerships.  
1838, 168, § 22.

Separate allow-  
ance to each  
partner.  
1838, 168, § 21.  
8 Cush. 109.

Certificate of

discharge to  
each partner  
1898, 168, § 21.

to each partner as it would or ought to be if the proceedings had been against him alone. In all other respects the proceedings against partners shall be conducted in the same manner as against a single person.

#### INSOLVENT CORPORATIONS.

Corporations  
may petition  
by authorized  
officer.  
1851, 827, §§ 1, 2.  
18 Met. 508.  
8 Gray, 581.  
10 Gray, 582.  
18 Gray, 490.  
18 Allen, 106.

SECT. 113. Any corporation created by authority of this state, except railroad and banking corporations, may apply by petition signed by an officer duly authorized by a vote of a majority of the corporators present and voting at a legal meeting called for the purpose, to the judge for the county where the corporation has its principal place of business, setting forth its inability to pay its debts and its willingness to assign all its estate and effects for the benefit of its creditors, and praying that such proceedings may be had in the premises as are hereinafter provided. The judge shall thereupon forthwith issue a warrant, as in the case of an application by a debtor under section seventeen, but requiring the notice given by the messenger to state further that the making of any contract by the corporation is forbidden by law.

Proceedings  
similar to those  
against a person.  
1851, 827.

SECT. 114. Thereupon like proceedings shall be had, with like powers, duties, and privileges, of the judge, register, messenger, assignee, and creditors, as are herein before provided upon the petition of a debtor, except as hereinafter mentioned.

Claims before  
last dividend  
provable.  
1851, 827, § 2.

SECT. 115. Claims on account of bills of exchange, indorsements, money due on bottomry or respondentia bonds, paid upon indorsements, or as surety, may be proved against an insolvent corporation before the making of the last dividend, in like manner as against the estate of an insolvent debtor before the making of the first dividend.

Schedules.  
Duties, &c., of  
officers.  
1851, 827, §§ 6,  
7, 8.

SECT. 116. The schedules to be furnished shall be prepared and furnished by the treasurer or other financial officer of the corporation, with such assistance as he requires from the other officers; and all the provisions of this chapter which apply to the debtor or set forth his duties in regard to executing papers, submitting to examinations, disclosing, making over, secreting, concealing, conveying, assigning, or paying away, his money or property, shall in like manner, and with like force, effect, and penalties, apply to each and every officer of the corporation, in relation to the same matters concerning the corporation, and the money and property thereof. And said officers shall at the second meeting severally make and subscribe an oath in substance as follows:—

Oath.

I, ———, (president, &c., or treasurer, &c.,) do swear that I verily believe the account of the creditors of the corporation, contained in the schedule signed by A. B., and now on file in court, is in all respects just and true; that I do verily believe that all the property and estate of said corporation, and all its books of account and papers, have been delivered to the messenger or the assignee; and that if any goods or estate not so delivered, hereafter come to my knowledge, I will faithfully and diligently apprise the assignee thereof. And I do further swear that, to the best and utmost of my knowledge, information, and belief, there is no part of the estate or effects of said corporation made over or disposed of in any manner in fraud of the laws relating to insolvency or of the creditors of said corporation.

Franchise of corporation authorized to take toll, may be sold.  
1851, 827, § 8.

SECT. 117. In the case of a turnpike, canal, bridge, or other corporation authorized by law to take toll, the assignment to the assignee shall empower him to sell and convey the franchise of the corporation, and any and all property and rights connected with the exercise thereof to such persons as become the purchasers of the same; and by virtue of such sale and conveyance such purchasers and their associates shall be deemed to be so far the owners of all such franchises, that they may have such corporation organized anew by them, in the manner provided in section thirty. If the provisions of law applicable to such corporation have been thus organized anew, it shall

possessed, as of its own property, of all the franchises to such corporation previously granted, and of all the property and rights so sold and conveyed with such franchises; and such purchasers, their associates, successors, and assigns, shall be the only members of the corporation. When such corporation is so organized anew, it shall not be liable to any suit at law or in equity, founded on any contract (performable within this state or made with any citizen thereof) which existed prior to such organization, nor for any claim provable under this chapter.

SECT. 118. When an assignee proceeds to sell the franchises of a corporation under the preceding section, he shall, if the judge has so ordered, expose the property, estate, or assets, of the corporation, for sale in shares, in number equal to the whole number of shares of the capital stock of the corporation, and such shares may thereupon be sold separately, and the purchasers thereof may organize anew in the manner in said section provided.

SECT. 119. All claims against any turnpike, canal, or other corporation authorized to take land or materials, for damages for taking land or materials, or laying out such road, canal, or turnpike, shall be preferred debts, next after debts due to the United States and to the commonwealth.

SECT. 120. All payments, conveyances, and assignments, made fraudulent and void by sections eighty-nine and ninety-one, when made by a debtor, shall in like manner, to the like extent, and with like remedies, be fraudulent and void when made by a corporation which is subject to the provisions of this chapter.

SECT. 121. An allowance or discharge shall not be granted to any corporation, or to any person as officer or member thereof.

SECT. 122. If a corporation whose goods or estate are attached on mesne process in a civil action founded on a contract for the sum of one hundred dollars or upwards, which is in its nature provable under this chapter, does not within fourteen days from the return day of the writ, if the term of the court to which the process is returnable so long continues, or on or before the last day of the term if the same sooner ends, dissolve the attachment in the manner provided in chapter one hundred and twenty-three; or if a corporation makes any fraudulent payment, conveyance, or transfer, of its property or any part thereof; any of its creditors whose claims provable against its estate under this chapter amount to the sum of one hundred dollars, may apply by petition, stating the facts and the nature of said claim or claims, verified by oath, to the judge in the county in which the corporation is established, praying that its estate may be seized and distributed according to law; and thereupon, after notice of the presentment of the petition given to the corporation by a copy thereof served on its president, treasurer, or clerk, thirty days at least before the return day of the notice, and a hearing of the petitioners and corporation, or after default of the corporation to appear at the time and place in the notice appointed, if the facts set forth in the petition appear to be true, the judge shall forthwith issue his warrant to take possession of the estate of the corporation; and such further proceedings shall be had thereon as upon a warrant issuing upon the petition of a corporation under section one hundred and thirteen.

SECT. 123. (R.) [If a mortgage is foreclosed pending proceedings under the ten preceding sections and before the appointment of an assignee, the assignee when appointed may redeem the same at any time within sixty days after his appointment, with similar remedies to those provided by law for the redemption of mortgages before foreclosure.]

SECT. 124. Nothing in the preceding sections shall give validity to or affect any mortgage made by a corporation for any purpose whatever.

Property may be sold in shares and purchasers organized.  
1861, 327, § 27.

Land damages preferred claims.  
1861, 327, § 19.

Void preferences.  
1861, 327, § 9.

No discharge, &c., to corporation, &c.  
See 8 Gray, 11.  
10 Gray, 243.  
Proceedings against a corporation.  
1861, 327, § 17.  
1866, 284, § 25.

Redemption of mortgages.  
1861, 327, § 20.  
(R.) *Repeal and substitute.*  
1862, 179, §§ 7, 9.

Mortgages not affected.  
1861, 327, § 28.

## FEES AND COSTS

SECT. 125. In each case there shall be a bill of fees, and none other, viz.:—

For issuing the warrant, five dollars:

For each day on which a meeting is held

For each order for a dividend, five dollars

Such fees shall have priority of payment over all other claims against the estate, and before a warrant issues the fees shall be paid to the register, or with the judge to be delivered to the messenger, as security for the payment thereof; and before a warrant is issued shall pay the same, and the messenger shall have a lien against him to compel payment to the messenger.

Before any dividend is ordered, the assets of the estate to the messenger the following fees:

First. For service of the warrant, two dollars

Second. For all necessary travel, at the rate of ten cents per mile

Third. For each written notice to creditors, ten cents:

Fourth. For custody of property, public services, his actual expenses, upon returning to the court, and making oath that they have been accounted for, and are just and reasonable:

For cause shown and upon hearing the court may make as the court in its discretion.

SECT. 126. The register shall receive a bill of fees, and pay over the same to the treasurer of the court on the first Mondays of January, April, July and October.

SECT. 127. When an attachment on a writ of habeas corpus is not dissolved before commencement of the suit, if the claim upon which the suit was commenced is a debt due to the estate of the debtor, the plaintiff may also recover the costs and expenses, of the suit and of the custody of the property, and the amount thereof shall be a privileged debt.

SECT. 128. In all matters of insolvency, the superior court, or in the absence of the superior court, the county courts may in their discretion award costs to the party who is the subject in controversy, as justice and equity may require.

SECT. 129. When costs are awarded to the party who is the subject in controversy, the court may issue an order for the payment of the same.

## VACATING PROCEEDINGS

SECT. 130. When a creditor who has presented a claim to the court, or the judge to vacate the proceedings in a case, the court may, after due notice to the estate and a hearing of the matter, if the claim is not proved, pass an order for the vacation of the proceedings therein.

## RETURNS.

SECT. 131. Each judge shall on or before the first day of January, April, July and October, make a return to the secretary of the court of the names, residences, and occupation, of each person by whom a claim was presented, and of the name of each corporation for which it was created, the place or places where the claim was presented, and the place or places where the claim was made, by or against which, as an insolvent.

has been filed in his court during the next preceding month, with the dates of such petitions. The secretary shall enter such returns, conveniently for reference, in a book which shall be open to the inspection of the public.

CASES BEFORE COMMISSIONERS, &c.

SECT. 132. Nothing in this chapter shall affect the jurisdiction of a commissioner of insolvency or master in chancery in any case pending before him at the time of its enactment; but such jurisdiction shall continue in full with the same fees of such commissioners, masters, and their clerks, as heretofore established.

Jurisdiction of commissioners, &c., in cases pending.  
1844, 178, § 15.  
7 Met. 420.

SECT. 133. If a commissioner of insolvency or master in chancery before whom proceedings upon any case in insolvency mentioned in the preceding section are pending, dies, is removed from the charge of the case, or for any cause is unable to perform the duties required of him, the case and all papers connected therewith shall be transferred to the court of insolvency for the county in which the case is pending. The court shall thereupon have jurisdiction of the case and proceed therein as if it had been originally commenced in said court.

Removal of cases upon death, &c., of commissioner, &c.  
1844, 178, § 15.  
1850, 217.  
1855, 223.  
1856, 284, § 2.

SECT. 134. Upon the closing of proceedings in a case pending before a commissioner of insolvency or master in chancery, all papers and records relating thereto shall be returned to and deposited in the office of the register of probate and insolvency for the county.

Papers, &c., to be deposited in probate office.  
1838, 163, § 14.  
1856, 284, § 40.

## CHAPTER 119.

### OF JUDGES AND REGISTERS OF PROBATE AND INSOLVENCY.

#### JUDGES.

- SECTION
1. Appointment of judges of probate and insolvency.
  2. Oath of judge.
  3. Judges may interchange, &c.;
  4. Case of absence, interest, vacancy, &c.
  5. Register to certify, &c. Bonds, &c.
  6. Judges not to be counsel or attorney in certain cases.

#### REGISTERS.

7. Registers' oaths.
8. Bonds of.
9. Register not to be of counsel, nor to receive fees in certain cases.

#### SECTION

10. Register to have custody of books, &c., belonging to probate office, &c.
11. Assistant registers for Suffolk, Middlesex, Worcester, Essex, and Norfolk;
12. duties of.
13. Vacancy, how filled.
14. Temporary register, when appointed.
15. oath, &c., of.

#### SALARIES AND FEES.

16. Salaries of judges, registers, and assistant registers.
17. Compensation of temporary register.
18. Judges, &c., not to receive fees.

#### JUDGES.

SECTION 1. The judges of probate and insolvency shall continue to hold their offices according to the tenor of their commissions, and as vacancies occur they shall be filled in the manner provided by the constitution, so that there shall be one judge in each county.

Appointment.  
Const. Ch. 2, § 1,  
art. 9. Ch. 3,  
art. 1.  
1858, 93, § 1.

SECT. 2. Each judge, before entering upon the duties of his office, in addition to the oaths prescribed by the constitution, shall take and subscribe an oath that he will faithfully discharge said duties, and that he will not during his continuance in office directly or indirectly be interested in or benefited by the fees or emoluments arising from any suit or matter pending in either of the courts of which he is judge; which oath shall be filed in the probate office.

Oath of judge.  
Const. Ch. 6,  
art. 1. Amend.  
const. art. 6.  
R. S. 83, § 26.  
1855, 284, § 16.  
1858, 93, §§ 2, 3.





years unless sooner removed by the judge. Before entering upon the discharge of his duties the assistant register shall take the oaths prescribed by the constitution, and shall give bond, with condition for the faithful performance of the duties of his office, to the treasurer of the commonwealth in a sum not less than five hundred nor more than five thousand dollars, as ordered by the judge, with one or more sureties approved by him.

SECT. 12. The assistant register shall perform his duties under the direction of the register, and shall pay over to him all fees and sums received as his assistant, to be accounted for as required by law. He may authenticate papers and perform such other duties as are not performed by the register. In case of the absence, neglect, removal, resignation, or death, of the register, the assistant may complete and attest any records remaining unfinished, and act as register until a new register is qualified, or until the disability is removed.

SECT. 13. If a vacancy occurs in the office of register, the governor with the advice and consent of the council may appoint some person to fill the office until another is elected as provided in chapter ten.

SECT. 14. Upon the death, resignation, removal, or absence, of the register, if there is no assistant register, or if he is also absent, the judge shall appoint a suitable person to act as temporary register until a register is appointed or elected and qualified, or until the disability is removed.

SECT. 15. Such temporary register shall be sworn before the judge, and a certificate thereof, with his appointment, shall be recorded with the proceedings of each court in which he acts.

#### SALARIES AND FEES.

SECT. 16. Judges, registers, and assistant registers, shall receive from the treasury of the commonwealth annual salaries as follows:—

For the county of Suffolk, the judge and register each three thousand, and the assistant register fifteen hundred, dollars:

For the county of Middlesex, the judge two thousand, the register fifteen hundred, and the assistant register one thousand, dollars:

For the county of Worcester, the judge eighteen hundred, the register fifteen hundred, and the assistant register one thousand, dollars:

For the county of Essex, the judge and register each fifteen hundred, and the assistant register eight hundred, dollars:

For the county of Norfolk, the judge fourteen hundred, the register one thousand, and the assistant register six hundred, dollars:

For the county of Bristol, the judge eleven hundred, and the register thirteen hundred, dollars:

For the county of Plymouth, the judge and register each one thousand dollars:

For the county of Berkshire, the judge and register each eight hundred dollars:

For the county of Hampden, the judge and register each eight hundred dollars:

For the county of Barnstable, the judge and register each seven hundred dollars:

For the county of Hampshire, the judge six hundred and fifty, and the register seven hundred and fifty, dollars:

For the county of Franklin, the judge six hundred, and the register seven hundred, dollars:

For the county of Nantucket, the judge and register each three hundred dollars:

For the county of Dukes County, the judge two hundred and fifty, and the register three hundred and fifty, dollars.

sex, and Norfolk.  
Const. Ch. 6,  
art. 1. And  
const. art. 6.  
1868, 93, §§ 6, 8.  
See 1861, 96.

Assistant register,  
duties of.  
1858, 93, §§ 6, 7.

Vacancy in office  
of register.  
1858, 173, § 8.  
1858, 93, § 12.

Temporary  
register:  
R. S. 83, § 28.  
1858, 173, § 8.  
1859, 284, § 14.  
1858, 93, §§ 2,  
3, 5, 6.

Oath, &c., of.  
R. S. 83, §§ 24,  
25.  
1856, 284, §§ 14,  
15. 1858, 93.

Salaries.  
1858, 93, §§ 13,  
14.

See Ch. 15, § 38.  
Suffolk.

See 1867, 357.

1871, 277.

Middlesex.

See 1867, 357.

Worcester.

See 1867, 357.

Essex.

See 1867, 357.

Norfolk.

See 1867, 357.

1871, 390.

Bristol.

See 1867, 357.

Plymouth.

See 1867, 357.

Berkshire.

See 1867, 357.

Hampden.

See 1867, 357.

Barnstable.

See 1867, 357.

Hampshire.

See 1867, 357.

Franklin.

See 1867, 357.

Nantucket.

See 1867, 357.

Dukes.

1859, 178.

See 1867, 357.

Compensation  
of temporary  
register.  
R. S. 83, § 24.  
1856, 284, § 14.  
1858, 98.

Judges, &c., not  
to receive fees.  
R. S. 83, § 52.  
1857, 274, § 2.  
1858, 98, § 2,  
3, 5.

SECT. 17. When a temporary re-  
titled to the same compensation as  
him if the appointment is caused  
death, removal, or resignation, of the  
treasury of the commonwealth the

SECT. 18. No judge or register  
ceive any fee or compensation in  
courts or acting as judge in any civil  
official capacity, except in cases exp

## CHAPTER

### OF JUSTICES OF THE PEACE

#### JURISDICTION AND PROCEEDINGS IN CIVIL MATTERS. SECTION

1. Original and exclusive jurisdiction.
2. Concurrent jurisdiction.
3. Justices may issue *scire facias* against executors, &c.
4. Within what time to be served.
5. Proceedings thereon.
6. Writs, forms of, where to run;
7. may run into any county for attachment;
8. service of, on absent defendants.
9. When, &c., causes may be heard.
10. On failure of justice to attend, other justice may attend, &c.
11. Judgment for plaintiff on default, &c.;
12. for defendant.
13. Cases concerning real estate may be removed to superior court, &c.
14. If party does not recognize, justice shall try the case.
15. Proceedings on such appeal.
16. Pleas before a justice.
17. Jury in actions over twenty dollars, when, &c.
18. Summoning, attendance, &c., of jury. Judgment.
19. Six jurymen.
20. Proceedings on trial.
21. Duty and fees of officer attending.
22. Jurors' fees.
23. Deficiency in number of jury, how supplied.
24. Chapter one hundred and thirty-two applicable.
25. Appeal allowed to the superior court.
26. Appellant to recognize;
27. to produce papers, &c., or former judgment affirmed.
28. Pleadings on appeal.
29. Proceedings on judgment after death of justice.
30. Same subject.
31. Execution, how issued thereon. •

#### JURISDICTION, &c., IN CRIMINAL MATTERS.

32. General powers.

#### JURISDICTION AND PROCEEDINGS

Original and ex-  
clusive juris-  
diction.  
R. S. 85, § 1.  
R. S. 104, § 4.  
R. S. 113, § 17.  
7 Met. 591.  
6 Cush. 278.

SECTION 1. Justices of the peace  
their counties, and shall have exclusive  
of replevin for beasts distrained or  
penalty or forfeiture supposed to have  
large, or to obtain satisfaction for dan

them; actions of forcible entry and detainer; and actions of contract and tort wherein the debt or damages demanded do not exceed twenty dollars. 14 Gray, 521. 7 Allen, 151. 11 Allen, 352. 102 Mass. 570. 106 Mass. 234.

SECT. 2. They shall have original and concurrent jurisdiction with the superior court of all actions of contract, tort, or replevin, where the debt or damages demanded or value of the property alleged to be detained is more than twenty and does not exceed one hundred dollars.

SECT. 3. They may issue writs of *scire facias* against executors and administrators, upon a suggestion of waste after judgment against them, and also against the bail taken in a civil action before them, and proceed therein to judgment and execution in the same manner as the superior court might do in like cases.

See Ch. 123, § 10. See 1863, 125.

SECT. 4. Such writs shall be served not less than seven nor more than sixty days before the time when they are returnable, and may run into any county in which the defendant may be found.

Within what time to be served. R. S. 85, § 17.

SECT. 5. It shall be no bar to such suit that the debt and costs on the original judgment together exceed the sum of one hundred dollars; but judgment and execution may be awarded by the justice for the whole sum due to the plaintiff with the costs of the new suit.

Proceedings thereon. R. S. 85, § 18.

SECT. 6. The original writ in all civil actions commenced before a justice of the peace, shall be a summons or a *capias* and attachment, and shall be signed by the justice. The forms of such writs shall be regulated as provided in chapter one hundred and twenty-three; but no writ issued by a justice of the peace shall run into any other county than that in which it is returnable, except as provided in the following section and section seventy-seven of chapter one hundred and forty-two.

Writs, forms of, where to run; R. S. 85, § 7. See § 4. See Ch. 108, § 47. Ch. 133, § 21. 7 Allen, 151. See 1866, 47. 1866, 279, § 9.

SECT. 7. Writs issued by justices of the peace may be directed to the proper officers in any county for the purpose of causing an attachment of property therein; but no more than one dollar and fifty cents shall be chargeable to or taxed against the defendant for the service of such writ.

may run into any county for attachment: 1838, 121, § 1. 2 Allen, 531. 4 Allen, 94. 7 Allen, 151.

11 Allen, 405. See 1866, 279, § 9.

See 1867, 355, § 3. 1869, 416, § 12.

1870, 201, § 12. 1870, 202, § 7.

1872, 200, § 7. 1872, 201, § 10.

SECT. 8. When an attachment is made upon a writ returnable before a justice of the peace, and the defendant is out of the state, so that no service can be made on him, and he has no agent or attorney residing within the state, the justice may order the action to be continued until notice thereof is given to the defendant in such manner as the justice shall order. Upon proof of such notice having been given, if the defendant fails to appear on the return day of such notice, judgment may be entered and execution issued for the plaintiff, upon his giving bond to the defendant with sufficient surety for double the sum for which execution is to be issued, to repay the amount recovered if within one year from the rendition of the judgment it is reversed.

service of, on absent defendants 1838, 121, § 2. See Ch. 123. 4 Allen, 94.

SECT. 9. Actions before justices of the peace may be heard and determined at their dwelling-houses or any other convenient and suitable places; and writs and processes may be made returnable accordingly, but not earlier than nine o'clock in the forenoon nor later than five o'clock in the afternoon.

When, &c., causes may be heard R. S. 85, § 31. 1866, 90. 4 Cush. 455.

SECT. 10. If a justice fails to attend at the time and place to which a civil process is returnable or continued before him, any other justice for the same county may attend and continue the process not exceeding thirty days, without costs and saving the rights of all parties; and he shall make a certificate thereof, which shall be filed with the papers in the case and entered upon the record by the justice before whom the process was returnable.

On failure of justice to attend, other justice may attend, &c. 1848, 138, §§ 1, 2.

SECT. 11. If any person duly served with process fails to appear and answer thereto, his default shall be recorded and the charge against him in the declaration taken to be true. Upon such default, or when the

Judgment for plaintiff on default, &c.



be one dollar a day for attendance, and such other sum as he may have to pay, not exceeding two dollars a day, for the use of rooms in which to hold the court, to be allowed by the justice.

SECT. 22. The fees of the jurors and of the officer who summons the jury and attends on the court, including the charge for rooms, shall be certified by the justice or his clerk, and paid by the county treasurer.

SECT. 23. When by reason of challenge or otherwise a sufficient number of jurors cannot be obtained for the trial of a cause, the justice shall cause jurors to complete the panel to be returned by the sheriff or constable from the by-standers, or from the city or town.

SECT. 24. The provision of chapter one hundred and thirty-two, so far as applicable, shall extend to jurors and trials before justices of the peace.

SECT. 25. A party aggrieved by the judgment of a justice of the peace in a civil action, except upon the verdict of a jury, may within twenty-four hours after the entry of the judgment appeal therefrom to the superior court, then next to be held in the county; in which case no execution shall issue on the judgment appealed from, and the case shall be entered, tried, and determined, in the court appealed to, in like manner as if it had been originally commenced there.

11 Gray, 377, 383.

12 Gray, 430.

6 Allen, 26.

13 Allen, 78.

SECT. 26. The appellant shall before the allowance of his appeal recognize with sufficient surety or sureties to the adverse party, if required by him, in a reasonable sum with condition to prosecute his appeal with effect, and to pay all such costs as may arise after the appeal.

10 Allen, 543.

See 1832, 217, § 5.

SECT. 27. The appellant shall produce at the court appealed to a copy of the record, and of all the papers filed in the case, except that when depositions or other written evidence or documents are so filed the originals shall be produced in the court appealed to instead of copies; and if the appellant fails to produce such copies or papers, or to enter and prosecute his appeal, the court may on the complaint of the adverse party affirm the former judgment or render such other judgment as law and justice may require.

SECT. 28. Any case so appealed may be tried at the court appealed to upon the issue joined before the justice, or the court may order the defendant to plead in the usual manner, and the case shall then be tried upon such issue as shall be joined therein.

SECT. 29. When a justice of the peace dies while a judgment rendered by him remains unsatisfied, any other justice in the same county may upon the application of the creditor cause the record of the judgment to be brought before him, and shall thereupon transcribe the same upon his own book of records and deliver the original to the person who produced it, noting on the original that he has so transcribed it.

SECT. 30. The justice applied to in such case shall when necessary issue a summons to the executor or administrator of the deceased justice, or to any other person supposed to have the custody of the records, requiring him to produce the same or to submit to an examination on oath as to the place where they may be found; and the justice may commit such person as for contempt until he submits to such examination if required and produces the record if within his custody or control.

SECT. 31. After the record has been so transcribed by the justice, he may issue execution on the judgment as if it had been rendered by himself, changing the form as the circumstances require; and any copy of the record certified by him shall have the same effect as an authenticated copy of the original.

1852, 314, § 5.

Jurors' fees.  
1852, 314, § 8.

Deficiency in  
number of jury,  
how supplied.  
1852, 314, § 6.

Chapter 132 ap-  
plicable.  
1852, 314, § 7.

Appeal allowed to  
the superior  
court.  
R. S. 85, § 13.  
R. S. 104, § 8.  
1859, 196.  
11 Met. 436.  
11 Cush. 80.  
1 Gray, 601, 602.  
2 Gray, 656.  
9 Gray, 49.

1876, 196 & 2

Appellant to  
recognize;  
R. S. 85, § 14.  
See Ch. 137, § 9.  
5 Allen, 388.  
7 Allen, 198.  
8 Allen, 336.

to produce  
papers, &c., or  
former judgment  
affirmed.  
R. S. 85, § 15.  
12 Cush. 133.  
See Ch. 114, § 15.  
6 Allen, 26.  
See 1832, 217, § 1.

117 M. 279

Pleadings on  
appeal.  
R. S. 85, § 12.

Proceedings on  
judgment after  
death of justice.  
R. S. 85, § 19.  
See 1862, 141.  
1871, 336.

Same subject.  
R. S. 85, § 20.

Execution, how  
issued thereon.  
R. S. 85, § 21.



chapter eighty-six; of offences for keeping billiard tables or bowling alleys contrary to the provisions of section seventy of chapter eighty-eight; of violations of the laws relating to the public health; and of offences against property in cemeteries; but no single penalty imposed for the last named offences shall exceed fifty dollars.

SECT. 41. They shall have jurisdiction concurrent with the superior court.

First. Of larcenies mentioned in section eighteen of chapter one hundred and sixty-one, when the money or other property stolen is not alleged to exceed the value of fifteen dollars, and of all other larcenies when the value of the property stolen is not alleged to exceed the value of five dollars:

Second. Of offences of buying, receiving, or aiding in the concealment of, stolen goods or other property, where they would have jurisdiction of a larceny of the same goods or property:

Third. Of offences of obtaining property by any false pretence, or by any privy or false token; or by the game of three-card monte, or any other game, device, sleight of hand, pretensions to fortune-telling, trick, or other means, by the use of cards or other implements or instruments, where they would have jurisdiction of a larceny of the same property:

In all which cases the punishment for a first offence shall be by a fine not exceeding fifteen dollars or imprisonment in the jail not exceeding six months; and upon a second conviction of the like offence, committed after a former conviction before a police court or a justice of the peace, the punishment shall be by fine not exceeding twenty dollars or imprisonment in the jail not exceeding one year: *provided*, that if the party convicted of buying, receiving, or aiding in the concealment of, such stolen goods or property, makes satisfaction to the person injured to the full value of the property stolen and not restored, the punishment of the offence may be mitigated as justice may require.

SECT. 42. They shall have jurisdiction concurrent with the superior court of all the offences mentioned in sections eighty-two, eighty-three, and eighty-five, of chapter one hundred and sixty-one, when the value of the trees, fruit, flower, or other property, injured, destroyed, taken, or carried away, or the injury occasioned by the trespass, is not alleged to exceed the sum of fifteen dollars; and in any such case the punishment shall be by imprisonment in the county jail not exceeding thirty days or fine not exceeding fifteen dollars.

SECT. 43. They shall have jurisdiction concurrent with the superior court of offences under section forty-eight of chapter one hundred and sixty-one; but they shall not impose a fine exceeding ten dollars for any such offence.

SECT. 44. They may in their discretion take jurisdiction and punish by fine not exceeding twenty dollars, or imprisonment in the jail or house of correction not exceeding one year, larcenies from a building, ship, or vessel, under section fifteen of chapter one hundred and sixty-one, where the money or property stolen does not exceed in value ten dollars.

SECT. 45. They shall cause to be arrested all persons found within their counties charged with any offences, and persons who after committing any offence within the county escape out of the same; examine into treasons, felonies, high crimes, and misdemeanors; and commit or bind over for trial those who appear to be guilty of crimes or offences not within their jurisdiction, and punish those guilty of such offences within their jurisdiction.

SECT. 46. Every person convicted before a justice of the peace of any offence whatever, except militia fines exceeding ten dollars exclusive of costs, may appeal from such sentence to the term of the superior

1862, 299.  
1865, 215, §§ 16, 18.  
1867, 194, §§ 1, 2.  
5 Cush. 400.  
5 Gray, 98.  
See Ch. 26.  
Ch. 28, § 12.  
Ch. 122, § 18.

of larcenies, buying, &c., stolen goods, &c., obtaining property by false pretences, trick, &c.  
R. S. 126, §§ 18, 28.  
1865, 135, §§ 1, 2.  
1867, 80.  
5 Cush. 289.  
See Ch. 161.  
§§ 16-18, 21, 25-27, 43-45, 54-57.  
9 Gray, 114.  
See 1868, 12.

Punishment.

Restitution.

Concurrent jurisdiction in certain cases.  
R. S. 135, § 46.  
1846, 62, §§ 1, 2.  
11 Gray, 428.  
See 1868, 821.

Same subject.  
1866, 39, § 2.

Jurisdiction of larcenies from building, &c.;  
1851, 153, § 4.  
1862, 4.

to arrest, bind over, &c., for felonies, misdemeanors, &c.  
R. S. 85, § 23.  
2 Allen, 61.

Appeal allowed to superior court.  
R. S. 12, § 112.





been commenced or examined previously to the first day of October in any year, shall on or before the fifteenth day of said month return to the secretary of the commonwealth, under oath, a true statement of all such causes, setting forth therein the date of such examinations, the names of the parties prosecuted, the crimes, offences, or misdemeanors, for which the prosecutions were had, the results thereof, the judgment of the court thereon, the amount of the bill of costs in each case, and how the same was paid.

SECT. 60. Any officer neglecting to make the returns required of him by the preceding section, shall forfeit two hundred dollars.

SECT. 61. The secretary of the commonwealth shall annually in September furnish to justices of the peace and police courts, blank forms for returns under the two preceding sections, with said sections printed thereon. Upon the receipt of such returns the secretary shall transmit the same to the auditor, who shall examine and report upon them to the general court.

SECT. 62. Nothing in this chapter shall control the regulations concerning any police court whereby a different provision is made for the exercise of any of the powers of justices of the peace.

state  
costs  
1852,  
1857,  
1858,  
1859.  
See  
14.

Pena  
ties  
1852,  
Secre  
nity  
1852,  
1858,

This  
to all  
courts  
R. S.  
1849,

## CHAPTER 121.

### OF CLERKS, ATTORNEYS, AND OTHER OFFICERS OF JUDICIAL COURTS.

#### CLERKS OF THE COURTS.

- Section
1. Clerk of S. J. C. for commonwealth. Appointment, &c.
  2. Assistant clerk.
  - 3, 4. Clerk, duties of.
  5. Clerk to account for fees, &c.
  6. Clerks, &c., to be clerks of county commissions.
  7. Vacancies in office of, how filled.
  8. Assistant clerks, tenure of office of. Vacancies, how filled.
  9. If clerks are unable to perform duties, clerks pro tempore may be appointed. Record to be made;
  10. not present at terms, court may appoint clerk pro tempore.
  11. Clerks to be sworn
  12. to give bonds;
  13. general duties of;
  14. to make alphabetical list of names of parties;
  15. to exhibit records to S. J. C. at every term thereof;
  16. justices to inspect records of, &c.;
  17. forfeiture of bond of. Proceedings.
  18. Sum so recovered, how applied.
  19. But this not to exempt clerks from other suits.
  20. Assistant clerks, duties of;
  21. to pay fees to clerk or other officer according to law.
  22. Clerks to account under oath for all fees, except, &c.;
  23. to retain salary, and one half of excess of fees;
  24. salaries of, in the several counties.
  25. When clerk may retain all fees.
  26. Salaries of assistant clerks.

#### SECTION

27. Salaries of clerks pro tempore.

#### ATTORNEYS AT LAW.

28. Attorneys at law, how admitted to practice.
29. Same subject;
30. to be sworn, &c.;
31. oath of office of.
32. No distinction of connections, attorneys, &c.
33. Attorneys, &c., from other states.
34. Attorneys may be removed for malpractice, &c. Expenses thereof, how paid.
35. Parties may manage their own suits.
36. Any person specially authorized may manage suit, &c.
37. Attorney to have lien for fees, &c.;
38. penalty on, for not paying over to client;
39. not to act in suit previously decided by him.
40. Sheriffs, &c., not to act as attorneys. Penalty.

#### MASTERS IN CHANCERY.

41. Masters in chancery. Tenure of office, &c.;
42. duties of;
43. fees of;
44. when court may appoint;
45. to finish proceedings, if commission expires.

#### AUDITORS.

46. Auditors, when appointed, &c.;
47. to give notice to parties,
48. report of majority of, valid;
49. court may discharge, &c.;
50. compensation of.

#### REPORTER.

51. Reporter, appointment of, &c.;
52. to make and publish reports annually.

*Bonds of clerks*

*Attorneys*



SECT. 9. If, by reason of sickness or other cause, the clerk of the courts in any county or of the supreme judicial court is unable to discharge the duties of his office, and there is no assistant clerk or he is also unable, the justices of the supreme judicial court, or a majority of them, may appoint a clerk pro tempore, who shall perform the duties of the office until the clerk or assistant clerk resumes his duties. The justices of the superior court may in like manner appoint a clerk pro tempore, when the clerk and assistant clerk of that court in the county of Suffolk cannot perform the duties of the office. When, after any such temporary appointment, the clerk or assistant clerk resumes his duties, he shall make a record of that fact, with the date, under his signature, in the then latest book of records in each of the courts.

SECT. 10. If at a term of any court neither the clerk nor assistant clerk is present, the court may appoint a clerk pro tempore, who shall perform the duties of the office during the term or until the clerk or assistant clerk resumes his duties; unless an appointment under some one of the preceding sections or an election pursuant to law is sooner made.

SECT. 11. The clerk, assistant clerk, and clerk pro tempore of a court shall be sworn before a judge thereof.

1851, 83, § 1. 1851, 158, § 2. 1855, 449, § 2. 1856, 37, § 1. 1856, 173. 1859, 196, §§ 40, 41.

SECT. 12. The clerk and assistant clerk of the supreme judicial court for the commonwealth shall give bond, approved by the court, with sufficient surety or sureties in the sum of two thousand dollars, to the treasurer of the commonwealth, with a condition for the faithful performance of the duties of their respective offices, before entering upon the same. The clerks and assistant clerks shall give bond in like manner to the treasurers of their respective counties, in a sum not less than five hundred nor more than two thousand dollars, to be determined by the court; and the clerks pro tempore appointed under section nine shall give bond in like manner, if required by the court.

SECT. 13. The clerks shall attend all the courts of which they are clerks when held in their respective counties, and the sessions of the county commissioners, and record their proceedings; and shall have the care and custody of all the records, books, and papers appertaining to and filed or deposited in their respective offices.

SECT. 14. They shall keep in every book of records an alphabetical list of the names of all the parties to any suit or judgment therein recorded, with a reference to the page where it is recorded; and when there are several persons, either plaintiffs or defendants, the name of every person, with a like reference, shall be inserted in its appropriate place in the alphabetical list.

SECT. 15. At every term of the supreme judicial court, the clerk shall exhibit the then latest book of records of each of the courts in the county, and such others as are required, so that the court may have notice of any errors or defects in the keeping of the records, and cause the same to be corrected as occasion requires.

SECT. 16. The justices of the several courts shall inspect the doings of the clerks from time to time, and see that the records are made up seasonably and kept in good order; and if the records are left incomplete for more than six months at any one time, such neglect, unless caused by sickness or other extraordinary casualty, shall be adjudged a forfeiture of the clerk's bond.

SECT. 17. In case of any neglect causing a forfeiture of the clerk's or assistant clerk's bond, the justices shall forthwith give notice thereof in writing to the treasurer having custody of the bond, who shall thereupon cause the bond to be put in suit.

SECT. 18. The sum recovered in such suit shall be applied to making up the deficient records under the direction of the court in

If clerks are unable to perform duties, clerks pro tempore may be appointed.

Record to be made: 1851, 158, §§ 1, 2. 1859, 196, § 9. See 1863, 64.

1873 & 181

not present at terms, court may appoint clerk pro tempore.

R. S. 81, § 14. R. S. 88, § 13.

Clerks to be sworn;

R. S. 88, § 8. R. S. 88, §§ 4, 14. 1850, 236, § 1.

to give bonds;

R. S. 88, § 3. 1843, 7, § 2. 1850, 236, § 1. 1851, 38, § 1. 1851, 158, § 2. 1856, 37, § 3. 1859, 196, § 41.

general duties of;

R. S. 88, § 5. See §§ 6, 20, 21.

to make alphabetical list of names of parties; R. S. 88, § 7.

to exhibit records to S. J. C. at every term thereof; R. S. 88, § 11.

Justices to inspect records of, &c.

R. S. 88, § 8. See 1861, 96.

Forfeiture of bond of. Proceedings. R. S. 88, § 9.

Sum so recovered, how applied.



## ATTORNEYS AT LAW.

SECT. 28. A citizen of this state, or an alien who has made the primary declaration of his intention to become a citizen of the United States, and who is an inhabitant of this state, of the age of twenty-one years and of good moral character, who has devoted three years to the study of the law in the office of some attorney within this state, shall, on application to the supreme judicial court, or superior court, be admitted to practice as an attorney in any court of this state, on complying with the other requisitions contained in this chapter.

SECT. 29. Any person having the other qualifications required in the preceding section, although he has not studied the term therein prescribed, may, on the recommendation of an attorney, petition the supreme judicial court, or superior court, to be examined for admission as an attorney, whereupon the court shall assign a time and place for the examination, and if satisfied with his acquirements and qualifications he shall be admitted as if he had studied three full years.

SECT. 30. Whoever is admitted as an attorney shall in open court take and subscribe the oaths to support the constitution of the United States, and of this commonwealth, and the oath of office.

SECT. 31. The oath of office is as follows:—

You solemnly swear that you will do no falsehood, nor consent to the doing of any in court; you will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice; but you will conduct yourself in the office of an attorney within the courts, according to the best of your knowledge and discretion, and with all good fidelity as well to the courts as your clients. So help you, God.

SECT. 32. A person admitted in any court may practise in every other court in the state; and there shall be no distinction of counsellors and attorneys.

SECT. 33. A person admitted an attorney or counsellor of the highest judicial court of any other state of which he was an inhabitant, and who afterwards becomes an inhabitant of this state, may be admitted to practice here upon satisfactory evidence of his good moral character and his professional qualifications.

SECT. 34. An attorney may be removed by the supreme judicial court or superior court for any deceit, malpractice, or other gross misconduct, and shall also be liable in damages to the party injured thereby, and to such other punishment as may be provided by law; and the expenses and costs of the inquiry and proceedings in any court for the removal of an attorney, shall be paid as in criminal prosecutions in the same courts.

SECT. 35. Parties may manage, prosecute, or defend their own suits personally, and by such counsel or attorneys as they may engage; but no more than two persons for each party shall without permission of the court be allowed to manage any case therein.

SECT. 36. Any person of good moral character may manage, prosecute, or defend a suit if he is specially authorized by the party for whom he appears, in writing or by personal nomination in open court.

SECT. 37. An attorney lawfully possessed of an execution, or who has prosecuted a suit to final judgment in favor of his client, shall have a lien thereon for the amount of his fees and disbursements in the cause, but this shall not prevent the payment of the execution or judgment to the judgment creditor without notice of the lien.

SECT. 38. If an attorney at law unreasonably neglects to pay money collected by him for and in behalf of a client, when demanded by the client, he shall forfeit and pay to such client five times the lawful interest of the money, from the time of the demand.

SECT. 39. No person shall be employed or allowed to appear as

Attorneys at law, how admitted to practice.  
R. S. 88, § 19.  
1852, 164.  
1859, 196.  
6 Mass. 832.  
10 Met. 239.

1876, 197

Same subject;  
R. S. 88, § 20.  
1859, 198.

to be sworn,  
&c.  
Amend. const.  
art. 6;  
R. S. 88, § 21.

Oath of office  
of.  
1785, 23, § 1.  
R. S. 88, § 22.

No distinction  
of counsellors  
and attorneys,  
&c.  
R. S. 88, § 23.  
Attorneys, &c.,  
from other  
states.  
R. S. 88, § 24.

Attorneys may  
be removed for  
malpractice, &c.  
Expenses there-  
of, how paid.  
R. S. 88, § 25.  
1859, 196.  
11 Allen, 472,  
473.  
See 1865, 81.

Parties may  
manage their  
own suits.  
R. S. 88, § 26.

Persons specially  
authorized, &c.  
R. S. 88, § 27.  
See 1855, 81.

Attorney to have  
lien for fees, &c.;  
R. S. 88, § 28.  
3 Greenl. 34.  
5 Mass. 398.  
11 Mass. 236.  
18 Mass. 525.  
4 Gray, 358.

penalty on,  
for not paying  
over to client;  
1859, 198, § 1.

not to act in

Repealed  
by 1876  
1975 2

## MASTERS IN CHANCERY, AU

ansel or attorney before a court in  
e himself as a judge, or justice of  
SECT. 40. A sheriff, deputy-sherif  
pear in a court nor before a justice  
for or in behalf of a party in a sui  
alter, a writ, declaration, plea, or p  
offends shall forfeit the sum of fifty

## MASTERS IN C

[See 1862, 109, § 1

SECT. 41. The masters in chance  
pective offices according to the  
cancies occur, the governor, with tl  
all make appointments, so that the  
y county. They shall be sworn, a  
m of five years, unless sooner reme  
SECT. 42. They shall, under the  
urt, perform the duties appertainin  
actice in equity, and shall be allow  
all order.

SECT. 43. Their fees shall be tax  
such party or in such manner as tl

SECT. 44. If the masters appointe  
terested in the suit, or otherwise di  
e court upon ordering a reference  
point some person to act as master.

SECT. 45. Proceedings and proce  
m of a master in chancery before t  
all be proceeded in to their termin  
d with the same effect as if his con

## AUDITO

[See 1862, 19

1876 c. 22

SECT. 46. When a cause is at issu  
the action be contract, tort, or rep  
etion appoint one or more auditors  
uchers and evidence, state accoun  
erein as may be ordered by the cou  
ie evidence upon such matters only  
der.

3 Gray, 617 13 Gray, 150. 16 Gray, 397 1 Allen,

SECT. 47. The auditors shall give  
d place appointed for their meetin  
ne as may be necessary.

SECT. 48. If there is more than on  
e cause, but a report by a majority

SECT. 49. The court may for cau  
int others, and may recommit the  
ination to the same or to other auc

SECT. 50. The court shall award  
tors, to be paid by the plaintiff and  
evails.

## REPORT

SECT. 51. The reporter of the d  
urt shall be sworn to the faithful pe  
ld his office according to the tenor  
cancy occurs, a reporter shall be a  
th the advice and consent of the  
regime

SECT. 52. He shall attend the court personally at all the law terms and capital trials, make true reports of decisions on all legal questions argued by counsel, and publish the same annually. The reports of the decisions upon all questions of law argued and determined before the first day of September in each year shall be published within ninety days thereafter.

Reporter to make and publish reports annually; R. S. 88, § 88. 1838, 100. See Ch. 112, § 12.

SECT. 53. He shall at his discretion report the several cases more or less at large according to their relative importance, so as not unnecessarily to increase the size or number of the volumes of reports.

how to report cases; R. S. 88, § 89.

SECT. 54. When in any of the cases mentioned in the two preceding sections judgment shall be entered at any other than a law term, the court shall communicate to the reporter a statement in writing of their decision or opinion.

when court to give statement of decision to; R. S. 88, § 40.

SECT. 55. If the reporter is necessarily prevented from attending at a term, he shall depute some suitable person to attend for him and take notes of the decisions; or the court may appoint a person to officiate in his stead until he resumes the performance of his duties, or until another is appointed.

If absent, deputy to be appointed; R. S. 88, § 41.

SECT. 56. The reporter shall receive from the treasury of the commonwealth an annual salary of three hundred dollars, and in the same proportion for any part of a year; which, with the profits arising from the publication of his reports, shall be in full compensation for his services.

compensation of. R. S. 88, § 42. 1843, 9, § 1. See Ch. 15, § 23.

CHAPTER 122.

SPECIAL PROVISIONS RESPECTING COURTS AND THE ADMINISTRATION OF JUSTICE.

SECTION	SECTION
1. First day of term, how designated.	7. Penalty.
2. When justice may change time and place of court.	8. What courts may naturalize.
3. Change, how ordered, &c.	9. Proceedings to be in open court, &c.
4. Courts not to be open Sunday, &c., unless, &c.	10. Other courts not to receive applications, &c.
5. Sheriffs, &c., to serve processes.	11. Penalty.
6. Attorneys, &c., not to buy, &c., demands for collection.	12. Who to act as clerks.
	13. Judge, &c., not disqualified by interest as inhabitant of town, &c.

SECTION 1. In writs, processes, records, and judicial proceedings, civil and criminal, the day on which any term is to commence may be designated as the first, second, or other Monday, or other day in the week, in the month in which the same happens.

First day of term, how designated. R. S. 82, § 44.

SECT. 2. If by reason of war, pestilence, or other public calamity, it is unsafe or inexpedient to hold a court at the time and place appointed, a justice of the court may appoint another time and place within the same county for holding the same.

When justice may change time and place of court. R. S. 89, § 2.

SECT. 3. Such adjournment shall be made by an order in writing, signed by the justice or justices, and served by the person to whom it is directed by public proclamation, in the shire town or as near thereto as is safe, and also by publication in such newspaper or in such other manner, as required in the writ.

Change, how ordered, &c. R. S. 89, § 3.

SECT. 4. Courts shall not be opened on Sunday, Thanksgiving, Fast, Christmas day, the twenty-second day of February, the fourth day of July, or the following day when either of the two days last mentioned occurs on Sunday, unless for the purpose of entering or continuing cases,

Courts not to be open Sunday &c., unless, &c. R. S. 89, § 4. 1866, 113, § 1. 2 Bay. 233.





## TITLE II.

### OF ACTIONS AND PROCEEDINGS THEREIN.

CHAPTER 123. — Of the Commencement of Actions and Service of Process.

CHAPTER 124. — Of Arrest, Imprisonment, and Discharge.

CHAPTER 125. — Of Bail.

CHAPTER 126. — Of Proceedings against Absent Defendants, and upon Insufficient Service.

CHAPTER 127. — Of Actions which survive, and the Death and Disabilities of Parties.

CHAPTER 128. — Of Actions by and against Executors and Administrators.

CHAPTER 129. — Of Pleadings and Practice.

CHAPTER 130. — Of Set-off and Tender.

CHAPTER 131. — Of Witnesses and Evidence.

CHAPTER 132. — Of Juries.

CHAPTER 133. — Of Judgment and Execution.

## CHAPTER 123.

### OF THE COMMENCEMENT OF ACTIONS AND SERVICE OF PROCESS.

#### VENUE OF ACTIONS.

##### SECTION

1. Transitory actions, where to be brought.
2. Actions concerning land in different counties, &c.;
3. against counties, where to be brought;
4. by counties;
5. when certain corporations are parties;
6. by and against city of Boston;
7. if brought in county of Suffolk, may be removed to another county;
8. where to be brought for recovery of forfeitures.

#### FORMS, ISSUING, AND RETURN, OF WRITS.

9. Original writs in civil actions;
10. different kinds.
11. Separate summonses, if property attached.
12. When writ and summons may be combined.
13. Writs in actions before justices of the peace.
14. Forms of writs, &c.;
15. to be under control of S. J. C.
16. Proceedings when defendant's name is unknown.
17. Writs, how issued.
18. Subpoena in suits in equity, how issued.
19. Writs to be returnable to the next ensuing term, &c.;
20. by persons out of state to be indorsed, &c.

#### SERVICE ON THE DEFENDANT.

21. Original writs, when to be served.
22. When, if against certain corporations.

##### SECTION

- 23, 24. Summons, how served;
25. if no personal service is made;
26. on absent defendant if co-defendant in the state, &c.;
27. in real actions against persons out of state.
28. Defendant in all cases, if out of state, &c., to have further notice.
29. Summons, how to be served on certain corporations;
30. how on other corporations.
31. Service in suits in equity.

#### ATTACHMENT OF PROPERTY — GENERAL PROVISIONS.

32. Property liable to attachment.
33. Successive attachments on same writ.
34. Proceeds of property attached and sold may be again attached.
35. Goods replevied from officer, liable to further attachment.
36. Plaintiff in replevin liable for whole value.
37. Goods may be further attached after death, &c., of first attaching officer.
38. Proceedings in such case.
39. Mode of attaching goods replevied.
40. Attachment to continue though attaching officer dies;
41. of land that is mortgaged.
42. Goods, &c., attached, held for thirty days after judgment. In Nantucket, &c., for sixty days in certain cases.
43. Attachment dissolved by judgment for defendant.



allow amendments to declarations so as to include the whole tract; this provision shall not apply if a county, the city of Boston, or one of the corporations enumerated in section five, is a party.

SECT. 3. Actions, whether local or transitory, against the inhabitants of a county, shall be brought either in the county where the plaintiff lives or in the defendant county, or in a county adjoining thereto, at the plaintiff's election.

SECT. 4. Such actions by the inhabitants of a county shall be brought in the county in which the defendant lives, or in a county adjoining the plaintiff county; and when the defendant lives in the plaintiff county it shall be brought in an adjoining county.

SECT. 5. When a corporation, other than a county or the city of Boston, is a party to an action, it may be brought as follows, to wit:

First. When both parties are cities or towns, school districts, or parishes; in the county in which either of the cities, towns, school districts, or parishes, is situated:

Second. When it is between a city, town, school district, or parish, and a natural person; either in the county in which such city, town, school district, or parish, is situated, or in that in which the other party lives:

Third. When one of the parties is a corporation of any other description than is before mentioned in this section; in any county in which such corporation has an established or usual place of business, or has held its last annual meeting, or usually holds its meetings; or if the other party is a natural person, in the county where such person lives.

SECT. 6. Actions, suits, and prosecutions by and against the city of Boston may be brought in either of the counties of Suffolk, Essex, Middlesex, or Norfolk, or in the county where the plaintiff lives; but if brought by the city in the county of Suffolk, may be removed to one of the other of said counties, as provided in the following section.

SECT. 7. The defendant or tenant, at the term at which his appearance is entered, may file a motion in writing for the removal of the suit, and the court shall thereupon order it to be removed to the proper court in such one of the other of said counties as the attorney of the city of Boston elects. Said attorney shall enter the same accordingly in the court so designated, at the then next term, and file therein certified copies of the writ or other process and of the order of removal; and the proceedings shall be conducted in like manner as if the suit had been originally commenced in that county.

SECT. 8. Every civil action for the recovery of a forfeiture shall be brought in the county in which the offence was committed, unless a different provision is made in the statute imposing the forfeiture.

#### FORMS, ISSUING, AND RETURN, OF WRITS.

SECT. 9. Civil actions, except those founded on *scire facias* or other special writs, shall be commenced by original writs, which shall be signed, sealed, and bear teste, as required by the constitution.

SECT. 10. The original writ may be framed, either, —

To attach the goods or estate of the defendant, and for want thereof, to take his body; or,

It may be an original summons, with or without an order to attach the goods or estate.

SECT. 11. When goods or estates are attached on either of the writs before mentioned, there shall be a separate summons, to be served on the defendant after the attachment, and the service thereof shall be a sufficient service of the original summons.

SECT. 12. In actions against corporations, and in other cases in

ferent counties,  
&c.  
1859, 87.  
102 Mass. 461.

Actions against  
counties, where  
to be brought;  
R. S. 90, § 19.

by counties;  
R. S. 90, § 20.

when certain  
corporations  
are parties;  
R. S. 90, § 18.  
R. S. act of  
amend. § 12.  
9 Mass. 321.  
4 Met. 212.  
4 Cush. 588.  
6 Cush. 524.  
5 Gray, 311.  
16 Gray, 118.  
98 Mass. 95.  
See 1866, 238, § 1.

by and against  
city of Boston;  
R. S. 90, §§ 120,  
121.  
R. S. act of  
amend. § 13.

if brought in  
county of Suf-  
folk, may be re-  
moved to another  
county;  
R. S. 90, §§ 122,  
123.  
R. S. act of  
amend. § 13.

where to be  
brought for re-  
covery of for-  
feitures.  
R. S. 80, § 17.

Original writs in  
civil actions;  
Const. Ch. 6,  
art. 6.  
R. S. 90, § 1.  
3 Allen, 74.  
different kinds  
thereof.  
R. S. 90, § 8.  
18 Met. 475.  
6 Allen, 360.

Separate sum-  
mons, if prop-  
erly attached.  
R. S. 90, § 4.  
13 Met. 375.  
106 Mass. 222.

When writ and

1876-167

summons may  
be combined.  
R. S. 90, § 6.  
See Ch. 128, § 6.

Writs in actions  
before justices  
of the peace.  
R. S. 90, § 7.

Forms of writs,  
&c.;  
1784, 28.  
R. S. 90, § 8.  
8 Mass. 198.

to be under  
control of S. J.  
C.  
R. S. 90, § 9.

Proceedings  
when defend-  
ant's name is  
unknown.  
R. S. 90, § 54.  
10 Met. 436.

Writs, how is-  
sued. Const.  
Ch. 5, art. 5.  
R. S. 82, § 35;  
90, §§ 2, 8; act  
of amend. § 9.  
1869, 196.  
8 Cush. 556.

Subpoena in  
equity suits,  
how issued.  
R. S. 90, § 118.  
5 Pick. 360.  
See Ch. 118, § 2.

Writs to be re-  
turnable to the  
next ensuing  
term, &c.;  
R. S. 90, § 116.  
1869, 196.

by persons out  
of state to be in-  
dorsed, &c.  
R. S. 90, §§ 10,  
11.  
R. S. 100, § 28.  
R. S. 112, § 24.  
8 Greenl. 27.  
6 Greenl. 313.  
8 Greenl. 236.  
9 Greenl. 61.  
6 Mass. 494.  
8 Pick. 25.  
11 Pick. 66.  
12 Pick. 569.

which goods and estate may be attached, but in which the defendant is not liable to arrest, the writ of attachment and original summons may be combined in one, requiring the officer to attach the goods and estate, and to summon the defendant.

SECT. 13. Original writs in actions before justices of the peace shall be signed by the justice before whom the action is brought, and shall be dated and filled up like the other writs before mentioned.

SECT. 14. The forms of writs in civil actions shall be the same as heretofore established by law and the usage and practice of the courts; but alterations may be made or allowed by the courts, when necessary to adapt them to changes in the law, or for other sufficient reasons.

SECT. 15. All changes in the forms of writs shall be subject to the final control of the supreme judicial court; and said court may by general rules regulate such changes in all the courts.

SECT. 16. When the name of a defendant is not known to the plaintiff, the writ may be issued against him by a fictitious name, and if duly served, shall not be abated for that cause, but may be amended on such terms as the court deems reasonable.

SECT. 17. Original writs in the supreme judicial court and all writs and processes in the superior court shall be signed and may be issued in term time or vacation by the clerk, may be returnable to the same court in any other county, may run into any county, and shall be executed and obeyed throughout the state.

SECT. 18. The subpoena on bills in equity shall be issued from the clerk's office either in term time or vacation, upon a bill there filed, shall bear teste of the first justice of the court who is not a party to the suit, and shall be under the seal of the court and signed by the clerk.

SECT. 19. Original writs issuing from the supreme judicial court, or superior court, if required to be served fourteen days before the return day, shall be made returnable at the court next to be held after the expiration of fourteen days from the date of the writ; and if required to be served thirty days before the return day, shall be made returnable at the court next to be held after the expiration of thirty days from the date of the writ: *provided*, that writs and processes of the supreme judicial court may be made returnable at any adjourned term, in like manner as at a term established by law.

SECT. 20. Original writs, writs of *audita* private persons on judgment or recognizance, petitions for certiorari, and bills in equity, in an inhabitant of the state, shall before the en- some sufficient person who is such inhabitan- tiffs is an inhabitant of the state the process- Every indorser, in case of avoidance or inabil- liable to pay all costs awarded against the p- is commenced within one year after the origi-

18 Pick. 226.  
8 Met. 59.

8 Cush. 96.  
11 Cush. 89.

See Ch. 129, § 29.  
12 Gray, 190.

1  
6

#### SERVICE ON THE DEFEN

SECT. 21. Original writs issuing from the superior court, shall be served fourteen days which they are returnable, and original writs justice of the peace shall be served not less than sixty days before the day on which they

SECT. 22. When an action is brought ag- precinct, parish, religious society, or school d- tors of common and undivided lands, or gene- in common, the writ shall be served thirty- return day.

Original writs,  
when to be  
served.  
R. S. 85, § 8.  
R. S. 90, § 21.  
1859, 196.  
5 Met. 324.

When, if against  
certain corpora-  
tions.  
R. S. 90, § 22.  
5 Mass. 100.

12 C. 467

SECT. 23. When there is a separate summons to be served after an attachment of goods or estate, it shall be served by delivering the summons to the defendant or leaving it for him as hereinafter directed; and when there is an original summons without an attachment, it shall be served by reading it to the defendant, or by delivering to him a copy thereof attested by the officer who serves it, or by leaving such copy for him as hereinafter directed.

Summons, how served;  
R. S. 90, § 39.  
18 Met. 475.

SECT. 24. The separate summons may be served at any time after the attachment is made: *provided*, it is served the number of days at least before the return day required with respect to the service of the original writ, and the certificate of the service of the summons shall be indorsed on the original writ.

same subject;  
R. S. 90, § 40.

SECT. 25. If the summons is not served personally on the defendant, the original or a copy, as the case may be, shall be left at his last and usual place of abode if he has any within the state known to the officer; and if he has none it shall be left with his tenant, agent, or attorney, if he has any within the state known to the officer. If he has no such last and usual place of abode, and no tenant, agent, or attorney, no service on him shall be required, except as is provided in the three following sections.

If no personal service is made;  
R. S. 90, §§ 41, 45.  
5 Met. 400.  
6 Cush. 354.  
13 Gray, 270.

SECT. 26. If an absent defendant whose goods or estate are attached is sued with one or more others on a joint contract, and he has no such last and usual place of abode, and no tenant, agent, or attorney, within the state, the summons for him, or a copy, as the case may be, shall be left with one of the co-defendants, if there be any within the state.

on absent defendant, if co-defendant in the state, &c.;  
R. S. 90, § 46.  
6 Cush. 354.  
3 Gray, 508.

SECT. 27. In real actions, if the defendant or tenant in the action is out of the state and has no last and usual place of abode here known to the demandant, the summons or an attested copy shall, in addition to any other service required, be left for him with the tenant or occupant of the demanded premises if there is any, and if not, in some conspicuous place on the premises.

in real actions against persons out of state.  
R. S. 90, § 47.  
11 Met. 370.  
2 Cush. 32.

SECT. 28. In all cases when the defendant is out of the state or his place of residence is not known to the officer, and no personal service is made on him, he shall, in addition to the service as herein prescribed, be entitled to further notice of the suit as provided in chapter one hundred and twenty-six.

Defendant in all cases, if out of state, &c., to have further notice.  
R. S. 90, § 48.  
6 Cush. 354.  
11 Met. 370.

SECT. 29. (R.) [In suits against a county the summons shall be served by leaving an attested copy thereof with one of the county commissioners, or with one of the officers who by law exercise the powers of county commissioners. In suits against a city, town, precinct, parish, religious society, or school district, or against the proprietors of common and undivided lands, or general fields or wharves lying in common, the summons shall be served by leaving an attested copy thereof with the clerk of the corporation or proprietors, and another like copy with the mayor or one of the aldermen or one of the selectmen of the city or town, or one of the assessors or standing committee of the parish or religious society, or one of the proprietors of such land or other estate, as the case may be; and if there is no such clerk found within the county, the copy shall be left with one of the other officers before mentioned, or with one of said proprietors; and if there are no such officers, the copy shall be left with one of the inhabitants of the city or town or one of the members of the corporation.]

Summons, how to be served on certain corporations;  
R. S. 90, § 42.  
(R.) Repeat and substitute.  
1806, 138.

SECT. 30. In suits against a corporation other than those mentioned in the preceding section, the summons shall be served by leaving the original or copy, as the case may be, with the clerk, cashier, secretary, agent, or any other officer having charge of its business; and if there is no such officer found within the county, the summons may be served on any member of the corporation.

how, on other corporations.  
R. S. 90, § 43.  
10 Gray, 164.  
4 Allen, 357.

Service in suits  
in equity.  
R. S. 90, §§ 118,  
119.

SECT. 31. Every writ of original summons in equity shall be served in the same manner, at least, before the day on which is required for the service of an original writ in equity between the same parties.

1876-167

## ATTACHMENT OF PROPERTY —

Property liable  
to attachment.  
R. S. 90, §§ 23, 24.

1863, 269, § 2.  
1869, 163.  
5 Greenl. 453.  
7 Mass. 123.  
11 Mass. 184.  
13 Mass. 128.  
17 Mass. 409.  
3 Pick. 363.  
11 Pick. 341.  
2 Met. 510.  
See Ch. 103;  
Ch. 116, § 78;  
Ch. 189, §§ 27-32.  
8 Gray, 617.

Successive at-  
tachments on  
same writ.

R. S. 90, § 55.  
See 1870, 310.

Proceeds of  
property at-  
tached and sold  
may be again  
attached.

R. S. 90, §§ 71,  
72.  
See §§ 72, 73.

Goods replevied  
from officer  
liable to further  
attachment.

R. S. 90, § 90.  
8 Allen, 94.

Plaintiff in re-  
plevin liable for  
whole value.  
R. S. 90, § 100.

Goods may be  
further attached,  
after death, &c.,  
of first attaching  
officer.  
R. S. 90, § 101.

Proceedings in  
such case.  
R. S. 90, §§ 102,  
103.

SECT. 32. All real estates, goods, and chattels, on execution, (except such goods and chattels as are exempted by law from execution, or are exempted by the common law as adopted and practised in this State upon the original writ, in any action in which the property is recoverable, and held as security to satisfy a debt or claim, may recover: *provided*, that no attachment shall be made on a writ returnable before a court, unless the debt or damage demanded exceeds ten dollars.

14 Gray, 220. 5 Allen, 107. 8 Allen, 553. 18 Alb.

SECT. 33. Different attachments may be made on the same writ by one or more officers and in different times before the service of the summons shall be made after the summons is served.

SECT. 34. When goods are sold or disposed of by the parties or after an appraisal as hereinafter provided, the proceeds of such sale shall remain in the hands of the officer shall be by him as the property of the original owner. The goods themselves would have been liable to attachment in the possession of the officer; and the proceeds of such sale shall be disposed of in the same manner as if they were the goods themselves before the sale. The officer shall not be prevented from paying over to the plaintiff the proceeds of such sale, after retaining enough to satisfy the claims actually existing at the time of sale.

SECT. 35. All goods taken by replevin shall be considered as still in the possession of the plaintiff so far as to be liable to further attachment in the same manner as if the goods themselves had not been taken.

SECT. 36. If there is judgment for a verdict in favor of the plaintiff in the replevin and his claim is for the whole of the goods, or the value thereof, the goods or the value thereof which they are eventually held was made by the replevin.

SECT. 37. If an officer after making a return of the goods is removed from office while the attachment is pending, the goods, whether replevied or remaining in the hands of the officer, may be attached by his executor or administrators, may be attached by the officer so as to bind the goods or the plaintiff as if the latter attachment had been made by the officer.

SECT. 38. The officer making the attachment shall not take the goods themselves, but the return setting forth an attachment in the hands of the officer, (whom the goods were previously attached to, or been replevied, by leaving a certified copy of the declaration,) and of the return of that officer if living, or if he is dead with his executor or administrator, or whoever else then has possession of the goods, shall be replevied and the officer who made the attachment such copy shall be left with the plaintiff.

administrators, and the attachment shall be considered as made when such copy is delivered in either of the modes before provided.

SECT. 39. Goods taken by replevin from an attaching officer shall not be further attached as the property of the original defendant, in any other manner than that provided in the four preceding sections, so long as they are held by the person who replevied them, or by any one holding under him, unless the original defendant has acquired a new title to the goods.

Mode of attaching goods replevied.  
R. S. 90, § 104.

SECT. 40. Goods and chattels attached by an officer, whether remaining in his custody at the time of his death or taken from him by replevin or otherwise, and also all claims for damages to goods so taken from him, shall remain subject to the attachment in like manner as if the officer had lived, and shall not be considered as assets in the hands of his executors or administrators.

Attachment to continue, though attaching officer dies;  
R. S. 90, § 95.

SECT. 41. If real estate that is attached is subject to a mortgage or other encumbrance, and the mortgage is redeemed or the encumbrance removed before the levy of the execution, the attachment shall hold the premises discharged of the mortgage or encumbrance, and the execution may be levied in the same manner and with the same effect as if the mortgage or other encumbrance had never existed.

of land that is mortgaged.  
R. S. 90, § 82.  
10 Mass. 424.  
18 Mass. 61.  
2 Met. 610.  
106 Mass. 507.

SECT. 42. If final judgment in any case is rendered for the plaintiff, the goods and estate attached shall be held for thirty days after the judgment, in order to their being taken on execution; and if the attachment is made in the county of Nantucket and the judgment is rendered in any other county, or if the judgment is rendered in Nantucket and the attachment is made in any other county, the goods and estate shall be held for sixty days after final judgment, unless in either case the attachment has been dissolved as hereinafter provided.

Goods, &c., attached held for thirty days after judgment.  
In Nantucket, &c., for sixty days, in certain cases.  
R. S. 90, § 25.  
106 Mass. 506.

SECT. 43. If the final judgment is for the defendant, the attachment shall be forthwith dissolved.

R. S. 90, § 26.

SECT. 44. The final judgment intended in the two preceding sections is that which is rendered in the original action, whether upon appeal or otherwise, and not such as may be rendered upon a writ of error or writ of review.

4 Mass. 99. 9 Mass. 241.

SECT. 45. When real estate, goods, chattels, or effects, are attached, and the debtor dies before they are taken or seized on execution, the attachment shall be dissolved if administration of the estate of the deceased is granted in this state within one year after his decease, or if application therefor is made within said year and administration is afterwards granted upon such application. If no such administration is granted, the property attached shall continue bound by the attachment in like manner as if the debtor were still living.

Attachment dissolved by judgment for defendant.

Judgment intended in two preceding sections.

R. S. 90, § 27.

Attachment dissolved by death of defendant, unless, &c.

R. S. 90, § 105.  
7 Mass. 224.  
9 Mass. 209.  
7 Pick. 229.  
11 Cush. 463.  
6 Gray, 114, 528.

SECT. 46. When the attachment is of goods, the officer shall upon demand deliver them to the executor or administrator, if any is appointed in this state within the time limited in the preceding section, upon receiving from the executor or administrator his legal fees and charges for attaching and keeping the goods.

Proceedings in such case.  
R. S. 90, § 106.  
5 Met. 356.

SECT. 47. If the officer has sold the goods on execution before such demand, or if he has sold in like manner any other chattel interest, or any right of redeeming real estate attached as aforesaid, he shall not be considered a trespasser for so doing; but he shall be liable only for the proceeds of the sale after deducting his legal fees and charges for attaching, keeping, and selling, the goods, and such proceeds may be recovered by the executor or administrator in an action of contract for money had and received.

Officer liable only for net proceeds.  
R. S. 90, § 107.  
1852, 312.

SECT. 48. If the officer in such case has paid over the proceeds of the sale to the judgment creditor before such demand, he shall be exempt from all further liability therefor, and the executor or administrator, if appointed as before provided, may recover from the judgment

Creditor liable therefor, if paid over to him.  
R. S. 90, § 108.  
1852, 312.

creditor the amount so paid to him, in an action of contract for money had and received.

SECT. 49. The defendant, in an action founded on either of the three preceding sections, shall not be allowed in any manner to set off a demand against the executor or administrator, or against the estate of the deceased.

No set-off allowed in such case.

R. S. 90, § 109.

1873.297

#### ATTACHMENT OF REAL ESTATE AND LEASEHOLD ESTATES.

SECT. 50. In attaching real estate or any right or interest in land, it shall not be deemed necessary that the officer should enter upon the land or be within view of it. In attaching leasehold estates the officer shall state in his return in general terms the leasehold property attached.

SECT. 51. No attachment of real estate or of any leasehold estates on mesne process shall be valid against a subsequent attaching creditor, or against a person who afterwards purchases the same for a valuable consideration and in good faith, unless the original writ or a copy thereof, and so much of the officer's return thereon as relates to the attachment of the estate, is deposited in the office of the clerk of the courts for the county in which the lands lie, or in the office of the clerk of the supreme judicial court if the lands lie in the county of Suffolk, which copy shall be certified by the officer, but need not contain the declaration in the writ.

SECT. 52. Every officer making such attachment shall deposit the writ or copy in the clerk's office according to the provisions of the preceding section; and he shall be entitled to receive four cents a mile for his travel from the place of service to the office of the clerk, together with his fee for the copy.

SECT. 53. The clerk shall note on every such writ or copy the day, hour, and minute, when he receives it, and shall file the same in his office. He shall also enter in a book to be kept for that purpose the name of the plaintiff and name of each defendant, whose estate is attached, the time when the attachment was made, and the time when the writ or copy was deposited. His fee in each case shall be twenty-five cents, for which he shall not be holden to render any account, and which shall be paid on the delivery of the writ or copy, and may be taxed for the plaintiff in his bill of costs.

SECT. 54. If the writ or copy is deposited as aforesaid within three days after the day on which the attachment is made, the attachment shall take effect from the time it was made, otherwise from the time when the writ or copy is so deposited.

SECT. 55. When an attachment on mesne process is made of real estate or any right or interest therein which has been fraudulently conveyed by the debtor to a third person; or which has been purchased or the purchase money of which has been directly or indirectly paid by the debtor and the title thereto retained in the vendor or conveyed to another person, with the design and for the purpose of fraudulently securing the same from attachment by a creditor of such debtor, or with the intent and for the purpose of defrauding creditors; it shall not be valid against a person who afterwards purchases the same for a valuable consideration and in good faith, unless the return required by the preceding section of the estate attached, by its locality, as known to him, and the names in whom the record or legal title stands.

SECT. 56. The clerk in such case, in parties to the writ which he is required to file, shall also enter in his book of

Attachment,  
how made.  
R. S. 90, § 81.  
1847, 267, § 8.  
6 Greenl. 453.  
18 Mass. 128.  
11 Pick. 341.  
11 Met. 235.  
Copy of writ and  
officer's return  
to be deposited  
in clerk's office.  
R. S. 90, § 28.  
1839, 89.  
1847, 267, § 8.  
1 Met. 212.  
2 Met. 488.  
10 Met. 142.  
11 Met. 244.  
108 Mass. 506.  
See 1870, 284.  
1871, 123.

Officer's duty  
and fees.  
1838, 186.  
1839, 89.  
1847, 267, § 8.  
2 Met. 488.  
5 Met. 517.

Clerk's duty  
and fees.  
R. S. 90, § 30.  
1856, 209.  
10 Allen, 491.  
See 1882, 190.

When such at-  
tachment takes  
effect.  
R. S. 90, § 29.  
10 Allen, 494.  
See 1860, 70.

Attachment of  
real estate  
fraudulently  
conveyed, &c.  
1844, 107, § 2.  
1855, 453.  
11 Gray, 217.  
18 Gray, 578.  
2 Allen, 77.  
9 Allen, 101.  
97 Mass. 339.  
99 Mass. 479.  
See Ch. 108, § 48.  
See 1870, 291,  
§§ 3, 4.

Clerk to enter  
name of persons  
having legal  
title, &c.

Key. deeds  
1873.297



persons in whom the record or legal title stands as returned by the officer, in the same manner as if the estate of such persons were attached as defendants in the writ. 1844, 107, § 3.  
See 1870, 291, § 3, 4.

ATTACHMENT OF GOODS, &c., WHICH CANNOT BE REMOVED.

SECT. 57. When an attachment is made of articles of personal estate which by reason of their bulk or other cause cannot be immediately removed, a certified copy of the writ, (without the declaration,) and of the return of the attachment, may at any time within three days thereafter be deposited in the office of the clerk of the city or town in which it is made; and such attachment shall be equally valid and effectual as if the articles had been retained in the possession and custody of the officer. Attachment of goods too bulky to be removed. R. S. 90, §§ 38, 84.  
8 Pick. 402.  
2 Met. 36.  
4 Cush. 425.  
See Ch. 133, § 42.  
12 Gray, 406.  
2 Allen, 185.  
4 Allen, 329.  
10 Allen, 414.  
Same subject. R. S. 90, § 85.

SECT. 58. The clerk shall receive and file all such copies, noting thereon the time when received, and keep them safely in his office, and also enter a note thereof, in the order in which they are received, in the books kept for recording mortgages of personal property; which entry shall contain the names of the parties to the suit and the date of the entry. The clerk's fee for this service shall be twenty-five cents, to be paid by the officer and included in his charge for the service of the writ. 110th. 167

ATTACHMENT OF SHARES IN CORPORATIONS.

[See 1870, 291.]

SECT. 59. The share or interest of a stockholder in any corporation organized under authority of this state may be attached by leaving an attested copy of the writ, (without the declaration,) and of the return of the attachment, with the clerk, treasurer, or cashier, of the company, if there is such officer; otherwise with any officer or person who has at the time the custody of the books and papers of the corporation. Shares in corporations, how to be attached. R. S. 40, § 13.  
R. S. 90, § 86.  
See Ch. 133, § 42.  
104 Mass. 277.

SECT. 60. Any share or interest so attached, with all the dividends thereafter accruing thereon, shall be held as security to satisfy the final judgment in the suit, in like manner as any other personal estate is held. Same subject. R. S. 90, § 87.  
See Ch. 133, § 48.

SECT. 61. If the officer having a writ of attachment against such stockholder exhibits the writ to the officer of the company who is appointed to keep a record or account of the shares or interest of the stockholders therein, and requests a certificate of the number of shares or amount of the interest held by the defendant in the suit, such officer of the company shall give such certificate to the officer holding the writ. If he unreasonably refuses to do so, or if he wilfully gives a false certificate thereof, he shall be liable for double the amount of all damages occasioned by such refusal or false certificate, to be recovered in an action of tort, unless the judgment is satisfied by the original defendant. Penalty on recording officer for refusal or false certificate. R. S. 90, § 88.  
1852, 312.  
See Ch. 133, § 48.

ATTACHMENT, &c., OF PERSONAL PROPERTY MORTGAGED OR PLEDGED.

SECT. 62. Personal property of a debtor that is subject to a mortgage, pledge, or lien, and of which the debtor has the right of redemption, may be attached and held in like manner as if it were unencumbered: *provided*, the attaching creditor pays or tenders to the mortgagee, pawnee, or holder, of the property, the amount for which it is so liable, within ten days after the same is demanded. Mortgaged goods. R. S. 90, § 78.  
1844, 148, § 1.  
1 Pick. 359.  
8 Met. 258.  
11 Met. 226.  
13 Met. 204.  
1 Cush. 273.  
6 Cush. 106.

SECT. 63. Every such mortgagee, pawnee, or holder, shall, when demanding payment of the money due to him, state in writing a just and true account of the debt or demand for which the property is liable to him, and deliver it to the attaching creditor or officer. If the same is not paid or tendered to him within ten days thereafter, the attachment shall be dissolved and the property shall be restored to him; and the attaching creditor shall moreover be liable to him for any damages he has sustained by the attachment. Mortgagor to state account. R. S. 90, § 79.  
1844, 148, § 1.  
23 Pick. 321.  
1 Met. 172, 294, 325, 515.  
3 Met. 144.  
10 Met. 7, 481.  
8 Cush. 306, 575.  
1 Gray, 254.  
8 Gray, 490.

8 Gray, 218. 14 Gray, 123, 568. 6 Allen, 80. 100 Mass. 323. 106 Mass. 53.  
10 Gray, 37. 3 Allen, 119, 241, 427. 98 Mass. 510. 103 Mass. 385. 106 Mass. 114.

110th. 29  
365  
111th. 273

Penalty for demanding too much.  
R. S. 90, § 80.  
1852, 312.

Debt to be repaid out of proceeds of sales;  
R. S. 90, § 81.

or by defendant.  
R. S. 90, § 82.

Personal property mortgaged in debtor's possession may be attached, and mortgagee summoned, &c.  
1844, 148, § 2.  
3 Cush. 308.  
4 Cush. 108.  
9 Gray, 45.

Court to ascertain what is justly due, and creditor to pay same to mortgagee, or attachment void.  
1844, 148, § 3.  
See 1865, 48.

Validity of mortgage may be denied by creditor, and tried by jury.  
1844, 148, § 4.

Creditor to retain amount paid by him, &c.;  
1844, 148, § 5.  
See 1865, 48.

not recovering judgment, to hold property until repaid, &c.  
1844, 148, § 6.  
See 1865, 48.

Goods attached may be sold by consent.  
R. S. 90, § 87.  
17 Pick. 429.  
1 Met. 34.  
4 Met. 137, 504.  
6 Met. 94.  
10 Met. 286.  
4 Cush. 333.  
See § 84.  
138, §§ 34-42.  
101 Mass. 268.

SECT. 64. If he demands and receives of him, he shall be liable for the execution of twelve per cent. a year, to be recovered in an action of contract for money had and received.

SECT. 65. When property attached is sold on mesne process or on execution, deducting the charges of the sale, the attaching creditor the amount so paid.

SECT. 66. If the plaintiff after recovering judgment in the suit, he shall retain the goods until the defendant repays the redemption, or as much thereof as he is obliged to pay to the mortgagee, they had not been attached, with interest as is demanded of the defendant.

SECT. 67. Personal property of a debtor being in the possession of the mortgagor in the same manner as if it was unencumbered may be summoned in the same action as the trustee of the mortgagor or as may be put to him or them by the court in consideration of the mortgage and

1 Allen, 381.

18 All

SECT. 68. If upon such examination after provided, it appears to the court that the court, having first ascertained the amount due, direct the attaching creditor to pay the sum within such time as it orders, or assign within such time as it orders, or not pay or tender the sum within such time shall be void and the property be returned to the debtor.

SECT. 69. If the attaching creditor moves that the same may be tried by such trial on an issue to be framed by the court, if upon such examination or verdict the mortgagee or his assigns shall recover the sum.

SECT. 70. When the creditor assigns the sum directed by the court of the proceeds of the property attached, with interest, and the balance shall be paid to the debtor.

SECT. 71. If the attaching creditor does not recover the sum directed by the court does not recover, nevertheless be entitled to hold the property until the sum so paid by order of court,

#### SALE BY CONSENT OF PERISHABLE PROPERTY

SECT. 72. When personal property is attached, and the debtor and all his assigns in writing to the sale, the attaching creditor may sell the property as described by law for selling like property, after deducting the necessary expenses of the sale, and the officer subject to the attachments, as the property would have been if it had remained unsold.

#### PERISHABLE PROPERTY

SECT. 73. When an attachment is made of goods or chattels which are liable to per

Property attached if perishable, &c., may

value by keeping, or which cannot be kept without great and disproportionate expense, and the parties do not consent to a sale thereof as before provided, the property so attached shall upon the request of either of the parties interested be examined, appraised, and sold or otherwise disposed of, in the manner following.

SECT. 74. Upon such application made by either party to the attaching officer, he shall give notice to all the other parties or their attorneys, prepare a schedule of the goods, and cause three disinterested persons acquainted with the nature and value of such goods to be appointed and sworn before a magistrate, or the attaching officer, to the faithful discharge of their duty as appraisers.

SECT. 75. If the defendant is not within the state and has no attorney therein, the notice shall be left in writing at his last and usual place of abode in the state if he has any, otherwise it shall be delivered to, or left at the dwelling-house or place of business of, the person who had possession of the property at the time of the attachment.

SECT. 76. The appraisers shall be appointed, one by the creditor or creditors in the several suits, one by the debtor or debtors, and one by the officer; and if the debtors or creditors respectively neglect to appoint such appraiser, or do not agree in the nomination, the officer shall appoint one in their behalf.

SECT. 77. The appraisers shall examine the attached property, and if they are of opinion that the same or any part thereof is liable to perish or waste, or to be greatly reduced in value by keeping, or that it cannot be kept without great and disproportionate expense, they shall proceed to appraise the same according to the best of their skill and judgment at the value thereof in money; and the goods shall thereupon be sold by the officer and the proceeds held and disposed of in the manner before provided in the case of a sale by consent of parties, unless the goods are taken by the debtor as provided in the following section.

SECT. 78. The goods so appraised shall be delivered to the debtor, if he requires it, upon his depositing with the attaching officer the appraised value thereof in money, or giving bond to him in a sufficient penalty and with two sufficient sureties, conditioned to pay to him the appraised value of the goods or satisfy all such judgments as may be recovered in the suits in which the goods were attached, if demanded within the time during which the goods would have been held by the respective attachments, or within thirty days after the time when the creditors respectively would have been entitled to demand payment out of the proceeds of the goods if they had been sold as before provided.

SECT. 79. The officer taking such bond shall return the same with the writ on which the first attachment is made, in like manner as bail bonds are returned, with a certificate of his doings in relation thereto, and if the bond is forfeited, the creditors or any of them may bring an action of contract thereon in the name of the officer.

SECT. 80. The writ in such action shall in addition to the usual indorsement have also indorsed on it the names of the creditors by whom the action is brought; and if judgment is rendered for the defendants, executions for the costs shall be issued against all the creditors whose names are so indorsed.

SECT. 81. If judgment is rendered for the plaintiff, the money recovered shall be first applied, under the order of the court, to pay the reasonable expenses of prosecuting the suit, so far as the same are not reimbursed by the costs recovered of the defendant; and the residue shall belong to all the attaching creditors according to their respective rights.

SECT. 82. The court may upon a hearing in equity determine the rights of the several attaching creditors, and award a separate execution

be appraised and sold.  
R. S. 90, § 58.  
18 Pick. 407.  
See § 84.  
3 Allen, 207.  
97 Mass. 67.  
101 Mass. 259.  
Proceedings upon application for appraisement.  
R. S. 90, § 59.  
1852, 1, § 3.  
6 Allen, 506.

Notice to defendant when out of the state.  
1887, 185.

Appraisers, how appointed.  
R. S. 90, § 60.  
101 Mass. 259.

Upon decision of appraisers, goods may be sold;  
R. S. 90, § 61.  
4 Cush. 388.  
See § 72.

or delivered to defendant upon his depositing money or giving bond, &c.  
R. S. 90, § 62.  
See 1869, 493.

Bond to be returned with the writ.  
R. S. 90, § 63.  
1852, 312.

Action thereon to be brought by creditors.  
R. S. 90, § 64.

Money recovered, to belong to them;  
R. S. 90, § 65.

to be distributed by court.  
R. S. 90, § 66.



## ATTACHMENTS DISPUTED BY PERSONS HAVING SUBSEQUENT LIENS, &amp;c.

*dist. clore.*

SECT. 92. When a person claims title or interest by force of a subsequent attachment, purchase, or mortgage, or in any other manner, in any estate real or personal that is attached in a suit between other persons, he may dispute the validity and effect of the prior attachment, on the ground that the sum demanded in the first suit was not justly due, or was not payable when the action was commenced.

Fraudulent attachments, how defeated.  
R. S. 90, § 88.  
19 Pick. 381.  
9 Met. 69.

1874, 152

SECT. 93. The person objecting to the attachment may file his petition in the court in which the first suit is pending, at any time before final judgment therein, praying that the prior attachment may be dissolved, and setting forth the facts and circumstances on which his petition is founded, and the grounds of his own claim.

Petition by the person objecting thereto.  
R. S. 90, § 84.

SECT. 94. The petitioner or some person in his behalf shall make oath that his claim is just and legal, and that all the other facts set forth in the petition are true, or are believed by the deponent to be so.

to be supported by affidavit.  
R. S. 90, § 85.

SECT. 95. The court upon the hearing of the petition shall at the motion of either party direct a trial by jury of any question of fact arising in the inquiry, and if it appears to the court that any part of the sum demanded in the prior suit is not justly due, or was not payable when the action was commenced, it shall order the attachment therein made to be dissolved in whole or in part as justice requires; but such order shall have no other effect on the prior suit.

Prior attachment may be dissolved in case, &c.  
R. S. 90, § 86.  
5 Pick. 410.  
8 Pick. 165.  
12 Pick. 199.

SECT. 96. The proceedings between the two adverse claimants or plaintiffs shall not be affected by any answer, plea, or other act, of the defendant in the prior suit, nor by the judgment rendered therein.

Proceedings not affected by answer, &c., of defendant.  
R. S. 90, § 88.

SECT. 97. No attachment shall be dissolved in manner aforesaid by reason of any defence to the action founded on the laws for the limitation of actions, restraining usury, requiring certain contracts to be made in writing, or of any other like defence, if it appears to the court that the demand is otherwise well founded, and is justly and equitably due.

Grounds of defence in such case.  
R. S. 90, § 89.

SECT. 98. The court may upon such inquiry award to either party reasonable costs; and if the prior attachment is maintained, the courts may award to the attaching creditor reasonable damages, and execution may be issued for such costs and damages.

Damages and costs may be awarded.  
R. S. 90, § 90.  
2 Met. 229.

SECT. 99. The court shall also, upon the filing of the petition, require a bond or recognizance of the petitioner, or of some person in his behalf, with sufficient surety or sureties, conditioned to pay to the adverse party all such damages and costs as may be awarded to him in the proceedings upon the petition.

Petitioner to give security for damages and costs.  
R. S. 90, § 91.

SECT. 100. If, during the pendency of the proceedings, the action in which the attachment is made is carried to a higher court, the inquiry concerning the attachment shall be carried to the same court, and there heard and determined as if the action had been originally commenced there.

Proceedings upon appeal.  
R. S. 90, § 92.

SECT. 101. The decision or judgment of the court upon such an inquiry, whether the attachment is thereby vacated or held to be valid and effectual, shall be a bar to any action brought by the petitioner against the party who made the attachment, for any supposed fraud or deceit therein.

Decision to bar action against prior attaching creditor for fraud.  
R. S. 90, § 93.

SECT. 102. Nothing contained in the ten preceding sections shall apply to any action commenced before a justice of the peace or police court.

To what cases applied.  
R. S. 90, § 94.  
6 Gray, 528.

1874, 152  
52 -

## REDUCTION OF EXCESSIVE ATTACHMENTS.

SECT. 103. If an excessive attachment of goods or estate is made on mesne process, the defendant may apply in writing, in any county, to a justice of the court to which such process is returnable, for a

Excessive attachments may be reduced on application to court.

1863, 312, § 59.

reduction of the amount of the attachment; a notice to the plaintiff, returnable before the same court as speedily as circumstances hearing the parties, it is found that the attachment shall order it to be reduced, or a party released, and thereafter the attachment or partially released, according to such order.

## DISSOLUTION OF ATTACHMENT

[See 1870, 291, §§ 2-6; 1

SECT. 104. Any person or corporation attached on mesne process in a civil action, after final judgment, dissolve such attachment, sureties, to be approved by the plaintiff by a master in chancery, with condition of amount, if any, that he may recover with judgment in such action. No sureties shall be satisfactory to the plaintiff, or it is no master that each one, if there are only pay his debts, a sum equal to that for or, if there are more than two, that they sum.

98 Mass. 369.

100 Mass. 45.

SECT. 105. Before such bond is approved, whose goods or estate are attached, or make application in writing to a master and places of residence of the persons providing notice of the time and place of the hearing to the plaintiff or his attorney, as is required by the plaintiff or his attorney may in writing approve the bond at any time.

SECT. 106. The fees of the master shall be one dollar for the hearing and decision. If the attachment is dissolved, such fee shall be paid by the defendant, or by the plaintiff's costs, if he prevails in the suit.

## WHEN OFFICER TO ATTEND

SECT. 107. When the writ requires the arrest of the person or estate of the defendant, and for want of a writ, the plaintiff or his attorney may by written order direct the officer to serve the writ, by an attachment or arrest, and the officer shall attend to such directions, if it is in his power to do so.

Plaintiff may direct the service of writs, by attachment or arrest.  
R. S. 90, § 56.  
4 Mass. 80.

1875, 164.

## CHAPTER

## OF ARREST, IMPRISONMENT, &amp;c.

## ARREST ON MESNE PROCESS AND EXECUTION.

## SECTION

1. Arrest on mesne process in actions of contract.
2. in actions of tort.
3. not in actions for slander.

## SECTION

4. 1
5. 1
- 6.
- 7.
8. 1

when Comth is a party  
1875. 179

Attachment  
pending suit  
1876-167

DISCHARGE OF PERSONS ARRESTED ON MESNE PROCESS  
AND EXECUTION.

## SECTION

9. Defendant, when arrested, to be allowed time to procure bail, &c.; to be carried before magistrate.
10. If defendant or debtor desires to take oath, but does not wish time fixed, &c., magistrate may take recognizance, &c.
11. A person surrendered, &c., may recognise anew.
12. When defendant or debtor desires to take oath, notice to be given.
13. Service of notice.
14. New notice not to be given until after seven days, unless, &c.
15. Defendant or debtor to be examined.
16. Examination may be adjourned, &c.
17. Pending examination, recognizance may be taken, &c. No recognizance after oath has been refused.
18. Defendant may be discharged if he was not intending to leave the state. Proceedings.
19. Examination concerning ability to pay, &c.
20. Debtor not entitled to oath, if he mispends his property, &c.
21. If magistrate is satisfied, &c., he may administer oath.
22. Certificate of magistrate and effect of discharge. Death of creditor not to affect proceedings.
23. Debtor on bail, &c., may be discharged, &c.;
24. not entitled to oath, after *scire facias*, until payment of costs.

## IMPRISONMENT.

25. Debtor, when arrested on mesne process in an action of tort, &c., may be committed, &c.;
26. on execution, &c., may be committed, &c.;
27. support of, in jail;
28. creditor may discharge;
29. goods and estate of, to remain liable;
30. liable for all sums paid for his support.

## PUNISHMENT OF FRAUDULENT DEBTORS.

## SECTION

31. When fraud is charged, debtor to plead, &c.
32. Either party may appeal.
33. Proceedings on appeal.
34. Upon default or conviction debtor may be denied oath, &c.

DISCHARGE OF PERSONS IMPRISONED ON WARRANTS  
OF DISTRESS IN FAVOR OF THE STATE.

- 35, 36, 37. Proceedings when committed on warrant of distress in favor of state.

DISCHARGE OR REMOVAL OF INSANE PERSONS IMPRISONED  
IN CIVIL CASES.

38. Insane debtors, how released from confinement on mesne process or execution.
39. Legal rights of creditors not affected.

SPECIAL PROVISIONS FOR PERSONS IN PRISON OR ON  
BAIL IN CIVIL ACTIONS WHEN JUDGMENT IS RECOVERED  
AGAINST THEM.

40. Discharge of persons in jail or on bail when final judgment is rendered against them.
- 41, 42. Proceedings when execution issues.
43. Bond may be given by person surrendered by bail after final judgment.
44. Debtor may be committed within thirty days after judgment.

## SURRENDER OF PRINCIPAL ON RECOGNIZANCES.

45. Proceedings when principal is surrendered on recognizance.

REMEDY ON RECOGNIZANCES AND BONDS, AND FOR  
ESCAPES.

46. Remedy on recognizances and bonds;
47. for an escape.

## FEES.

48. Fees of magistrate;
49. of the judge, under section thirty-eight;
50. of jailer.

## ARREST ON MESNE PROCESS AND EXECUTION.

(Executions against women; see 1862, 162.)

SECTION 1. No person shall be arrested on mesne process in an action of contract, unless the plaintiff or some person in his behalf makes affidavit and proves to the satisfaction of some justice of a court of record, police court, judge of a probate court, master in chancery, commissioner of insolvency, and except in the county of Suffolk, trial justice, or of any justice of the peace:—

First. That he has a good cause of action, and reasonable expectation of recovering a sum amounting to twenty dollars, exclusive of all costs which have accrued in any former action:

Second. That he believes, and has reason to believe, the defendant has property not exempt from being taken on execution, which he does not intend to apply to the payment of the plaintiff's claim: and

Third. That he believes, and has reason to believe, that the defendant intends to leave the state, so that execution if obtained cannot be served upon him:

Or, (instead of the second and third,) that the defendant is an attorney at law; that the debt sought to be recovered is for money collected by the defendant for the plaintiff, and that the defendant unreasonably neglects to pay the same to the plaintiff.

And such affidavit and the certificate of the magistrate that he is satisfied the same is true shall be annexed to the writ.

Arrest on mesne process in actions of contract.  
1857, 141, § 17.  
1859, 166, § 2.  
See Ch. 27, § 60.  
Ch. 52, § 26; Ch. 113, § 73; Ch. 165, § 38.  
13 Gray, 575.  
2 Allen, 431.  
97 Mass. 29.  
106 Mass. 296, 298.

Arrest on mesne  
process in actions  
of tort;

1855, 249, § 1.  
7 Gray, 59.  
See Ch. 17, § 60.  
See Ch. 165, § 36.  
8 Allen, 484.  
97 Mass. 29.

S. 1873 = 35266

not in actions  
for slander.

1855, 249, § 2.

Officer need not  
arrest without  
order.

R. S. 90, § 110.

Arrest on execu-  
tion;

1857, 141, §§ 1,

2, 3.

1859, 163, § 2.

See Ch. 17, § 60.

Ch. 128, § 73.

Ch. 165, § 36.

13 Gray, 376.

4 Allen, 72.

12 Allen, 71.

97 Mass. 524.

98 Mass. 580.

104 Mass. 854.

106 Mass. 502.

See 1860, 215, § 1.

1862, 169, § 2.

1873 = 35265

115 m 236

8 Allen, 181.

112 m 394

5 Allen, 308.

on execution  
for costs;

See 1862, 169, § 2.

of woman.

1857, 141, § 30.

5 Allen, 208.

See 1862, 162.

SECT. 2. No person shall be arrested on mesne process in actions of tort unless the plaintiff or some person in his behalf believes, and has reason to believe, that the defendant has a sum equal at least to one-third of the value of the property against the defendant, that he has a sum equal at least to one-third of the value of the property beyond the jurisdiction of the court, and that he has reason to believe that that execution, if obtained, cannot be satisfied with a certificate of the magistrate true shall be annexed to the writ.

SECT. 3. No person shall be arrested on mesne process in actions for slander or libel. 10 Allen

SECT. 4. The officer who serves a writ for not having arrested the defendant required by the plaintiff or his attorney

SECT. 5. No person shall be arrested on mesne process in actions for damages in a civil action, except in the case of a judgment creditor or some person in his behalf, where the amount of the judgment amounting to twenty dollars exclusive of said judgment, whether the same have been paid in a former action on the same original cause of action, as that amount remains uncollected, and satisfaction of some magistrate named in the writ was issued by a justice of the peace before him:

First. That the debtor has proper property on execution, which he does not interfere with the plaintiff's claim; or,

Second. That since the debt was accrued, the debtor has fraudulently disposed of some part of his estate, or has used the same for his own use or defraud his creditors;

Third. That since the debt was accrued, the debtor has hazarded an amount of one hundred dollars or more, which is prohibited by the laws of this state; or,

Fourth. That since the debt was accrued, the debtor has expended and misused his goods or estate for the purpose of enabling himself to swear away an amount of twenty dollars except such execution; or,

Fifth, (if the action was founded on contract) that the debt was contracted with an intention to defraud the creditor.

Sixth. That the debtor is an attorney, and has neglected to pay the same. And the magistrate that he is satisfied that the charges therein contained, or some other charges, shall be annexed to the execution.

SECT. 6. No affidavit shall be required for the return of a writ of execution issued for costs only, but a writ of execution shall be returned thereon, unless he requires the magistrate authorized by this act, and to such debtor so arrested shall be in this chapter relative to arrests on other writs.

SECT. 7. No woman shall be arrested on mesne process in actions for tort.



SECT. 8. No arrest shall be made after sunset, unless specially authorized by the magistrate making the certificate, upon satisfactory cause shown.

No arrest after sunset.  
1857, 141, § 80.  
104 Mass. 364.

1878 c 352

## DISCHARGE OF PERSONS ARRESTED ON MESNE PROCESS AND EXECUTION.

SECT. 9. When arrested on mesne process the defendant shall be allowed reasonable time to procure bail, and when arrested on such process in an action of contract, or on execution, he shall be allowed reasonable time to procure sureties for his recognizance hereinafter mentioned. When arrested on mesne process in an action of contract, if he does not give bail, and when arrested on execution in any case, he shall be taken before some justice of a court of record, police court, judge of a probate court, master in chancery, commissioner of insolvency, and except in the county of Suffolk, trial justice or two justices of the quorum.

When arrested, to be allowed time to procure bail, &c.  
1857, 141, § 4, 18, 22.  
1857, 258, § 1.  
7 Gray, 581.  
10 Gray, 490.  
6 Allen, 280.  
7 Allen, 349.  
106 Mass. 341.

SECT. 10. When taken before the magistrate, if the defendant or debtor desires to take an oath as hereinafter mentioned, but does not desire any time fixed for his examination, the magistrate may take his recognizance with surety or sureties in a sum not less than double the amount of the execution, or of the ad damnum in the writ, if he is arrested on mesne process, that within thirty days from the day of his arrest he will deliver himself up for examination before some magistrate authorized to act, giving notice of the time and place thereof as herein provided, and appear at the time fixed for his examination, and from time to time until the same is concluded, and not depart without leave of the magistrate, making no default at any time fixed for his examination, and abide the final order of the magistrate thereon: *provided*, that if he is arrested on mesne process and the writ is returnable within thirty days, the number of days within which he shall deliver himself up shall be limited by the magistrate so as not to extend beyond the return day of the writ.

Magistrate may take recognizance, &c.  
1857, 141, § 10, 18.  
7 Gray, 548.  
8 Gray, 246.  
11 Gray, 226.  
13 Gray, 397.  
14 Gray, 324, 579.  
1 Allen, 466, 461, 463.  
4 Allen, 70, 72, 74.  
5 Allen, 586.  
6 Allen, 285, 287.  
7 Allen, 346, 349, 368, 466.  
8 Allen, 150.  
10 Allen, 344.  
11 Allen, 29.  
98 Mass. 31, 580.  
99 Mass. 38.  
108 Mass. 549.  
104 Mass. 221, 364, 423.

106 Mass. 341, 389.

106 Mass. 118, 455.

SECT. 11. A person taken on execution and recognizing for his appearance to take the oath for the relief of poor debtors, may if surrendered by his surety recognize anew for such appearance at the time, place, and upon the conditions, expressed in the first recognizance.

A person surrendered, &c., may recognize anew.  
104 Mass. 424.

SECT. 12. If the defendant or debtor when taken before the magistrate or at any time when entitled thereto desires to take an oath as herein-after provided and to have a time fixed therefor, the magistrate shall appoint a time and place for his examination and issue notice thereof to the plaintiff or creditor, signed by him and designating his official capacity, substantially in the following form:—

Notice when debtor desires to take oath;  
1857, 141, § 4, 5, 18, 20.  
8 Cush. 239.  
1 Gray, 170.  
1 Allen, 256, 461.  
6 Allen, 285.  
7 Allen, 346, 466.  
9 Allen, 378, 379.  
10 Allen, 344.  
14 Allen, 30.  
100 Mass. 299.  
101 Mass. 314.  
103 Mass. 364.  
106 Mass. 341.  
106 Mass. 454.

To A — B — C — D —, arrested on mesne process (or execution) in your favor, desires to take the oath for the relief of poor debtors, (or, if arrested on mesne process in an action of contract, the oath that he does not intend to leave the state,) at (naming the day and hour and place.)

E — F —, (Magistrate.)

Notice may be given that the defendant arrested on mesne process as aforesaid desires to take both of said oaths, and the form of notice be varied accordingly.

SECT. 13. The notice shall be served by any officer qualified to serve civil process, by giving to the plaintiff or creditor, his agent or attorney, an attested copy thereof, or by leaving such copy at the last and usual place of abode of the plaintiff or creditor, his agent or attorney, allowing not less than one hour before the time appointed for the examination, and time for travel at the rate of not less than one day for every twenty-four miles' travel. When there is more than one person plaintiff or creditor, or more than one agent or attorney, service on one shall be sufficient. When the plaintiff or creditor is dead or not a resident in

service of.  
1857, 141, § 4, 5.  
7 Met. 237.  
11 Met. 77.  
7 Cush. 263, 265.  
6 Gray, 261.  
10 Gray, 226.  
1 Allen, 466, 461, 641.  
2 Allen, 73.  
7 Allen, 364.  
9 Allen, 378.  
13 Allen, 308.  
104 Mass. 221.

1861, c 112

109 M. 216

115 M. 236

do 353

111 M. 76

112 M. 87

the county where the arrest is made the agent or attorney if he lives in the business therein; but if no such agent county, the notice may be served on The person who made the writ may al of the plaintiff or creditor when an execution issued thereon.

SECT. 14. When a defendant or de to take the oath for the relief of po same shall be given until the expiration of the former notice, unless the former or service.

SECT. 15. When the notice mention duly served, the magistrate who issued in section one, shall attend at the time examine the defendant or debtor as he

SECT. 16. The magistrate may adj and shall have the same powers with re as justices of the peace or other court nesses duly summoned shall attend as

SECT. 17. Pending the examination fendant or debtor is carried before a accept his recognizance with surety o double the amount of the execution, o if he is arrested on mesne process, tha for his examination, and from time to and not depart without leave of the any time fixed for his examination, a magistrate thereon. No recognizance of appeal under section thirty-three, sl the oath has been once refused to the

SECT. 18. If the defendant, arreste of contract, has given notice that he do not intend to leave the state, he shall and any legal and pertinent evidence n If the magistrate is satisfied that the and does not at the time of examinat shall make certificate thereof, and disc

SECT. 19. If the defendant or debt to take the oath for the relief of poor amine him on oath concerning his esta and his ability to pay the debt or sat he is arrested; and shall hear any legal be introduced by either party. The p examination propose to the defendant tinent to the inquiry, and the examin party, be in writing, in which case it the defendant or debtor and preserved

SECT. 20. If any person, arrested misspends or misuses his goods, effects dollars, not exempt from being taken c attached by ordinary process of law, c for which he is arrested or committed same to the arresting creditor in sati debts, he shall not be entitled to the of poor debtors.

SECT. 21. If, upon the examination truth of the facts set forth in the oar or debtor, and in the certificate to be

New notice not to be given until after seven days, &c.

1857, 141, § 27.  
1 Allen, 541.  
6 Allen, 285.  
103 Mass. 551.  
105 Mass. 890.

Debtor to be examined.  
1857, 141, §§ 5, 7.  
6 Gray, 251.  
7 Allen, 349.  
See 1880, 215, § 2.  
1870, 77.

Examination may be adjourned, &c.  
1857, 141, § 7.  
6 Allen, 280.  
7 Allen, 354.  
11 Allen, 395.  
14 Allen, 157, 158.  
See 1870, 77.

Pending examination, recognizance may be taken, &c.  
1857, 141, §§ 10, 18.  
1 Allen, 403.  
6 Allen, 280.  
7 Allen, 208, 209.  
8 Allen, 148.  
9 Allen, 579.  
104 Mass. 424.

Defendant may be discharged if he was not intending to leave the state.  
Proceedings.  
1857, 141, § 20.

Examination concerning ability to pay, &c.  
1857, 141, §§ 6, 18.

Debtor not entitled to oath if he misspends his property, &c.  
1857, 141, § 16.  
See 1873, 231.

If magistrate is satisfied, &c., he may administer oath.

116 A. 487

appears to him that the defendant or debtor is entitled to his discharge under the provisions of this chapter, the magistrate shall administer to him the following

*Oath for the Relief of Poor Debtors.*

I (here repeat the name) do solemnly swear that I have not any estate, real or personal, to the amount of twenty dollars, except the estate, goods, and chattels, which are by law exempt from being taken on execution; and that I have not any other estate now conveyed, concealed, or in any way disposed of, with the design to secure the same to my own use or to defraud my creditors: So help me, God.

Form of oath.

SECT. 22. After administering the oath the magistrate shall make a certificate thereof under his hand, as follows, to wit:—

S——, ss. I hereby certify, that A—— B——, a poor prisoner, arrested upon execution, (or on mesne process in an action of contract,) has caused E—— F——, the creditor (or plaintiff) at whose suit he is arrested, to be notified according to law of his desire to take the benefit of the law for the relief of poor debtors; that in my opinion said A—— B—— has not any estate, real or personal, to the amount of twenty dollars, except the estate, goods, and chattels, which are by law exempt from being taken in execution; and has not any other estate now conveyed, concealed, or in any way disposed of, with design to secure the same to his own use or defraud his creditors. And I have after due examination of said A—— B——, administered to him the oath for the relief of poor debtors.

Witness my hand, this —— day of ——, in the year ——.

A—— B——, (Magistrate.)

Certificate of magistrate and effect of discharge. Death of creditor not to affect proceedings.  
1857, 141, §§ 8, 9.  
9 Allen, 376.  
1857, 141, §§ 2, 19.  
100 Mass. 300.

117 M. 4

Upon taking the oath, the defendant or debtor shall be discharged from arrest or imprisonment, and shall be forever exempt from arrest on the same execution, or any process founded on the judgment, or on the same cause of action, unless convicted of having wilfully sworn falsely on his examination. If he is arrested or committed on execution, the judgment shall remain in full force against his estate, and the creditor may take out a new execution against his goods and estate as if he had not been committed; and if he is committed on mesne process, any execution which may afterwards issue on a judgment for the same cause of action, shall issue against his goods and estate, and not against his body. The death of the execution creditor shall not affect any proceedings instituted under the provisions of this chapter.

SECT. 23. When a person has given bail or is imprisoned on mesne process in an action of contract, or is arrested or imprisoned on any execution, he may be discharged in the same manner, and subject to the same provisions of law, so far as applicable, as a person arrested on an execution mentioned in section five.

Debtor on bail, &c., may be discharged, &c.;  
1857, 141, § 23.  
1857, 268.  
106 Mass. 385.

R. 1173, 352

SECT. 24. No debtor shall be entitled to the benefit of the oath for the relief of poor debtors after a writ of *scire facias* on the bail bond given by him in the original action has been served upon his bail, unless he pays all costs which have accrued on such *scire facias*.

not entitled to oath, after *scire facias*, until payment of costs;  
1857, 141, § 23.

IMPRISONMENT.

SECT. 25. If the defendant when arrested on mesne process in an action of tort shall not give bail; or when arrested on mesne process in an action of contract and carried before the magistrate, does not desire to take an oath, or fails to recognize to the satisfaction of the magistrate as before provided, and does not give bail; or if on his examination he does not swear to the satisfaction of the magistrate that he does not intend to leave the state, and the oath for the relief of poor debtors is refused him, the magistrate shall make a certificate thereof, and the defendant shall be conveyed to jail and there kept until final judgment in the suit in which he was arrested. If the final judgment is against him, he shall be held for thirty days thereafter, in order that he may be taken on execution: unless (if the oath for the relief of poor debtors has not been refused him) he recognizes as aforesaid or gives bail, or

when arrested on mesne process in an action of tort, &c., may be committed, &c.;  
1857, 141, §§ 21, 22.  
2 Gray, 210.  
10 Gray, 491.  
8 Allen, 150.

bond as provided in section forty, debtors, or an oath that he does discharged by the plaintiff.

A debtor arrested on execution, &c., may be committed, &c. ; 1857, 141, § 11. 11 Gray, 228. 14 Allen, 618.

112 M. 401

SECT. 26. If the debtor arrest magistrate does not desire to take ors, or fails to procure surety a magistrate as before provided, or refused to him, of which refusal execution and signed by the mag and there kept until he has recog for the relief of poor debtors has tion is satisfied, or until he is re notice as before provided and to debtors.

support of, in jail; 1857, 141, § 26.

SECT. 27. When a person con cess or execution in any civil ac jailer shall furnish his support at t cents a week, to be paid by the c such case shall, if required by th vance the money necessary for the jailer satisfactory security therefor so to do for twenty-four hours a the prisoner. Such demand may commitment, or of the plaintiff o after the prisoner has claimed such

creditor may discharge; R. S. 97, § 58.

SECT. 28. If a debtor commi a pauper, the creditor may at t discharged.

goods and es- tate of, to remain liable; R. S. 97, § 59. 9 Cush. 290. 105 Mass. 285.

SECT. 29. When a debtor is s or by the jailer for want of secu provided, the debt and costs with support in prison shall remain estate, and may be enforced accor had not been committed on the thereafter be liable to arrest or in or charges.

liable for all sums paid for support. R. S. 97, § 60.

SECT. 30. If the debtor und shall not be entitled to his disch charges for his support in prison writ and upon the commitment c due on the execution and the cost

#### PUNISHMENT OF

When fraud is charged, debtor to plead, &c. 1857, 141, §§ 12, 13. 1 Gray, 172. 10 Gray, 491. 1 Allen, 385. 7 Allen, 268. 100 Mass. 287. 105 Mass. 617.

116 M. 15

SECT. 31. When either of the bered second, third, fourth, fifth, a or when the plaintiff or creditor pending the examination of the notice of his desire to take the o such charges in writing, subscrit creditor or some person in his t in the nature of a suit at law, to plead that he is guilty or not guil hear and determine the same. T such hearing give evidence of a filed, nor of any fraudulent acts three years before the commencen

Either party may appeal.

SECT. 32. When the hearing tioned in the preceding section,

the magistrate, either party may appeal to the superior court, in like manner as from the judgment of a justice of the peace in civil actions. And the trial in the court appealed to shall be by a jury, unless the court with the consent of both parties hears and determines it without a jury.

SECT. 33. If the plaintiff or creditor appeals, he shall before the allowance of the appeal recognize with sufficient surety or sureties to enter and prosecute his appeal with effect, to produce at the court appealed to a copy of all the proceedings upon said charges, and to pay all costs if judgment is not reversed. If the defendant or debtor appeals, he shall recognize in like manner and with the further condition that if final judgment is against him he will within thirty days thereafter surrender himself to be taken on execution and abide the order of the court, or pay to the plaintiff or creditor the whole amount of the original judgment against him.

SECT. 34. If the defendant or debtor after either of said charges has been made or filed against him voluntarily makes default at any time appointed for the hearing, or if upon a final trial he is found guilty of any of them, he shall have no benefit from the proceedings under this chapter, and may be sentenced, by the magistrate or court before whom the trial is had, to confinement at hard labor in the house of correction for a term not exceeding one year, or to confinement in jail not exceeding six months.

1857, 141, § 18.  
1869, 199.  
4 Gray, 533.  
10 Gray, 491.  
8 Allen, 160.

Proceedings on appeal.  
1857, 141, § 14.  
1 Allen, 385.

112 m. 394

Debtor may be denied oath, &c.  
1857, 141, § 15.  
9 Met. 447.  
8 Gray, 318.  
See Ch. 125, § 1.  
10 Gray, 491.  
8 Allen, 181.  
See 1872, 261.

110 m. 18

116 m. 136

112 m. 394

DISCHARGE OF PERSONS IMPRISONED ON WARRANTS OF DISTRESS IN FAVOR OF THE STATE.

SECT. 35. When a person committed to prison on a warrant of distress in favor of the commonwealth is unable to pay the debt for which he is imprisoned, he shall be entitled to his discharge in like manner as poor debtors arrested on execution; and all the proceedings shall conform as nearly as may be to the provisions of law in relation to such debtors, except as hereinafter provided.

SECT. 36. If he represents to the jailer that he is desirous to take the oath for the relief of poor debtors, the jailer shall make the same known to some magistrate mentioned in section one. The magistrate shall thereupon appoint a time and place for the examination of the debtor, and shall notify the district-attorney for the district by a notice which shall be served on him by an attested copy thereof in hand, or by leaving the same at his usual place of abode, thirty days at least before the time appointed for the examination.

SECT. 37. When the place appointed for the examination is out of the city or town where the district-attorney resides, or he from any cause is unable to attend the examination, he may appoint counsel in his stead; and for such attendance by himself or counsel, suitable allowance shall be made by the superior court for the county.

Proceedings when committed on warrant of distress in favor of state.  
1855, 276, §§ 1, 2.

Same subject.  
1855, 276, §§ 2, 3.  
7 Cush. 538.

Same subject.  
1855, 276, § 5.

DISCHARGE OR REMOVAL OF INSANE PERSONS IMPRISONED IN CIVIL CASES.

SECT. 38. When a person confined in jail on mesne process or execution is supposed to be insane, and thereby rendered incapable of taking the oath for the relief of poor debtors, any person interested for his removal from jail on account of his supposed insanity may apply by petition to the judge of the probate court for the county in which he is imprisoned, setting forth the facts. The judge shall appoint a time and place for a hearing and examination in the premises, and shall order notice thereof to be given to the creditor or his attorney seven days previously to the time appointed. If satisfied upon the exami-

Insane debtors, how released from confinement on mesne process or execution.  
1848, 320, § 1.

Legal rights of  
creditor not af-  
fected.  
1848, §20, § 8.

nation that the person is insane, the judge may order his discharge or removal to either of the state lunatic hospitals, or to such other place as is provided by law for insane persons in any city or town in the state.

SECT. 39. When a person is so discharged or removed from jail, the legal rights of the creditor shall not be affected thereby, but shall remain as though no commitment had taken place.

**SPECIAL PROVISIONS FOR PERSONS IN PRISON OR ON BAIL IN CIVIL ACTIONS WHEN JUDGMENT IS RECOVERED AGAINST THEM.**

Discharge of per-  
sons in jail or on  
bail when final  
judgment is ren-  
dered against  
them.  
1837, 198, § 1.  
1857, 141.  
See 1869, 426.

SECT. 40. Every person held in prison in a civil action at the time when final judgment in such action is rendered against him, shall be discharged upon giving to the creditor a bond with sufficient surety or sureties to be approved by some magistrate named in section one, in a penalty not less than double the amount of the judgment, with condition that he shall surrender himself at the same prison, to the keeper thereof, between the hours of eight and ten o'clock of the forenoon of the thirtieth day next after the rendition of said judgment, or if said thirtieth day falls on Sunday, on the next following day, which day shall be specified in the bond, and there remain until five o'clock of the afternoon of the same day, so that he may be taken on the execution issuing on said judgment.

Proceedings  
when execution  
issues.  
1837, 198, § 3.  
1857, 141, § 3.

SECT. 41. If an execution issuing on such judgment amounting to twenty dollars exclusive of costs, and while so much as that amount remains uncollected, is delivered to an officer qualified to serve the same, with the affidavit required for the arrest of a debtor on execution, he may at any time within thirty days after the rendition of the judgment on which the same is issued leave said execution, or a copy thereof, with the jailer; and in such case the debtor shall upon the surrender of himself as provided in said bond be committed and held by the jailer upon the execution in like manner as if he had been taken and committed thereon by the officer to whom the execution was delivered. The officer shall return the taking and commitment in like manner, and be entitled to the same fees, as if the execution had been served in the common form.

Same subject.  
1837, 198, §§ 3, 4.

SECT. 42. The jailer shall immediately after the expiration of said term of thirty days certify under his hand, upon the execution or copy so left with him, the fact that such debtor has or has not surrendered himself, according to the truth of the case, and give a similar certificate to the officer on request, to be annexed to his return on the execution: and such certificate shall be deemed sufficient authority to the officer to make his return accordingly. Such return with the certificate annexed shall be deemed prima facie evidence of the fact, as well on the question of breach of condition of the bond as in other cases. If the jailer gives a false certificate, it shall be deemed misconduct in office, for which any party injured shall have a remedy in damages.

Bond may be  
given by person  
surrendered by  
bail after final  
judgment.  
1837, 198, § 5.

SECT. 43. If a person who has given bail on mesne process in a civil action is surrendered by his bail after final judgment in such action, he shall be enlarged upon giving to the creditor a bond like that before prescribed in section forty, except that the condition thereof shall be for his surrender at the same prison on the thirtieth day next after the surrender by his bail. The particular day on which the same will fall, and where there is more than one prison in the same county the particular prison at which the surrender is to be made, shall be specified in the condition of the bond. All the other provisions relating to the bond mentioned in section forty shall apply to the bond prescribed in this section.

Debtor may be  
committed  
within thirty

SECT. 44. Nothing contained in the four preceding sections shall prevent an officer from taking the debtor and committing him to prison

on such execution at any time within said thirty days after the rendition of judgment or surrender by the bail, as he might have done if such bond had not been given. And the commitment of the debtor in such case shall be deemed equivalent to his surrender according to the condition of his bond, and shall discharge the same.

days after judgment.  
1887, 198, § 6.

#### SURRENDER OF PRINCIPAL ON RECOGNIZANCES.

SECT. 45. Whoever recognizes as surety for another as provided in this chapter, may at any time before breach of recognizance surrender his principal and exonerate himself from all further liability, in the manner provided for the surrender by bail, and all the proceedings on such surrender shall be the same as provided in the case of bail.

Proceedings when principal is surrendered on recognizance.  
1867, 141, § 26.  
See Ch. 126.

#### REMEDY ON RECOGNIZANCES AND BONDS, AND FOR ESCAPES.

SECT. 46. When any recognizance or bond taken under this chapter is broken, the creditor may have a remedy thereon by action of contract, to be commenced within one year after such breach; and judgment shall be entered for the amount of the penalty, but execution shall issue for so much thereof only as may be justly and equitably due: *provided*, that if the recognizance was taken on an execution, the execution shall not issue for less than the amount due on the original judgment, with all the lawful costs and charges arising after the issuing of the original execution.

Remedy on recognizances and bonds;  
1887, 198, § 2.  
1867, 141, § 28.  
10 Gray, 288.  
2 Allen, 75.  
5 Allen, 398.  
98 Mass. 31.  
See 1870, 312, § 1.

SECT. 47. When an escape is made by a prisoner arrested or committed on execution in a civil action, whether the escape be negligent or voluntary on the part of the officer, the creditor may in an action of tort against the officer recover such damages as he has suffered by the escape, and may also have his remedy against the original debtor by a *scire facias*, or an action of contract on the judgment.

for an escape.  
R. S. 97, §§ 71, 72.  
1862, 312.  
2 Gray, 214.  
10 Gray, 365.  
4 Allen, 74.  
6 Allen, 260.

#### FEES.

SECT. 48. The fees of the magistrate shall be: for hearing an application for a certificate to arrest, one dollar; for approving sureties and taking a recognizance after arrest, one dollar; for an examination, two dollars for each day spent therein. And the plaintiff or creditor causing an arrest shall pay these fees in advance. If the oath is not administered, they shall be allowed as part of the service of the writ or execution. If the plaintiff or creditor shall, at any time after request, make default in payment of the fees, or if the plaintiff or creditor, or some one in their behalf, shall not attend the examination, the defendant or debtor shall, without examination and without payment of any fees, be discharged from arrest or imprisonment, and shall be forever exempt from arrest on the same execution or any process founded on the judgment; and a certificate of such discharge under the hand of the magistrate shall be annexed to the writ or execution: *provided*, that if, after the oath shall have been once refused, the defendant or debtor shall again apply for the benefit of the same, the fees for such subsequent application or examination thereon shall be paid by him. The fee of a magistrate for approving a bond under the provisions of sections forty and forty-three shall be one dollar, to be paid by the applicant.

Fees of magistrate;  
1866, 249, § 1.  
1866, 276, § 6.  
1867, 141, § 29.  
1 Allen, 492.  
8 Allen, 245.  
5 Allen, 426.  
6 Allen, 288.  
7 Allen, 354.  
9 Allen, 378.  
14 Allen, 513.  
See 1866, 198, § 1.

11/11/11. 288

SECT. 49. The fee of the judge for receiving a petition, issuing the order of notice, and for the examination and adjudication under the provisions of section thirty-eight, shall be five dollars, to be paid by the petitioner.

of judge under section thirty-eight;  
1848, 320, § 2.

SECT. 50. The fees of the jailer, under the provisions of sections

of jailer.

1897, 198, § 4.

forty-one and forty-two, shall be fifty cents; and for a certificate to debtor, twenty-five cents, to be the expenses of serving the execution is required, the jailer shall be to be paid by the party requiring

## CHAPTER 125

### OF BAIL.

#### TAKING BAIL.

##### SECTION

1. Defendant arrested on mesne process may give bail, &c.
2. Bail, how taken.
3. Officer may require two sureties, &c.
4. Bond may be approved, &c. Fees;
5. to bind those who execute it, though, &c.;
6. to be returned with the writ.
7. Obligations of the bail.
- 8, 9. Suit on the bail bond.
10. To be brought within one year.
11. Answer of defendants.

#### SURRENDER OF PRINCIPAL, &c.

12. Principal may be surrendered in court, &c.
13. and committed;
14. may be surrendered out of court;
15. to keeper of the county jail.
- 16, 17. Proceedings in such case.

##### SECTION

18. Notice to plaintiff.
19. Bail to pay costs on *scire facias* when, &c.
20. Treatment of principal after surrender.
21. Principal may be surrendered on the original writ.

#### BAIL IN ACTIONS BEFORE JUSTICES OF THE PEACE, &c.

22. Proceedings on bail bond before a justice of the peace or police court.
23. Surrender of principal in such a case.
24. Officer to attend, if requested.
- 25, 26. Proceedings upon surrender.
27. Fees of officer.

#### SUPPORT OF PRINCIPAL.

- 28, 29. When debtor is surrendered by bail and claims support as pauper, &c.
30. When bail are liable for support of prisoner.
31. When liability of creditor commences.

#### TAKING BAIL.

Defendant arrested on mesne process may give bail, &c. ;  
1857, 141, § 22.  
See Ch. 124,  
§§ 81-84.

how taken.  
R. S. 91, § 1.  
2 Mass. 481.  
10 Mass. 20.  
12 Mass. 484.  
12 Met. 564.  
4 Gray, 301.  
10 Gray, 490.  
103 Mass. 399.  
See 1869, 426.

Officer may require two sureties, &c.  
R. S. 91, § 2.  
1850, 199, § 1.  
1852, 211.  
9 Mass. 479.

Bond may be approved, &c.  
Fees;  
1857, 141, § 22.

to bind those who execute it, though, &c.

SECTION 1. A defendant arrested on mesne process shall be released on giving bail; but if he has been sentenced to imprisonment on any charge of fraud under the provisions of chapter one hundred and twenty-four, the giving of bail shall not discharge him therefrom.

SECT. 2. Bail in a civil action shall be taken as heretofore practiced by a bond to the sheriff, if the writ is returnable to the sheriff, or otherwise to the coroner or other officer with condition that the defendant shall abide the final judgment of the court.

SECT. 3. An officer shall not be required to take bail with two sureties at least, each of them a resident of the state; and he may examine, on oath, the persons offered as sureties, as to the sufficiency of the bond with one surety only, he shall sustain the insufficiency of the bond when taken.

SECT. 4. The bond may be approved by the recorder or police court, judge of a court of sessions, or commissioner of insolvency, trial judge, and of the quorum, and when so approved shall be sufficient. The magistrate shall be the examining officer and approval or disapproval shall be final.

SECT. 5. A bail bond shall bind the defendant with one surety only, or with



either of them have not sufficient property within the is not approved as aforesaid.

SECT. 6. The bond shall be returned and filed with clerk shall note on the writ that a bond is so filed. the bond shall be sent with the other papers to the co

SECT. 7. In case of the avoidance of the principal the execution that he is not found, his bail shall be the judgment, with interest thereon from the time it wa he discharges himself by surrendering the principal bef against him on the writ of *scire facias*, or by other su that suit.

SECT. 8. The bail bond shall be considered so far a and of the nature of a recognizance, that the credit writ of *scire facias* thereon in his own name against it shall be sufficient to allege, substantially, that the d bail, without setting forth the bond.

SECT. 9. The *scire facias* shall be issued from the judgment against the principal is rendered, and may b clerk's office in vacation as well as term time.

SECT. 10. No such action shall be maintained agai bail, unless the writ of *scire facias* is served on him after the rendition of final judgment against the princ

SECT. 11. The defendants in such action may ap either jointly or severally to the plaintiff's allegations

#### SURRENDER OF PRINCIPAL, &c.

SECT. 12. The bail may surrender the principal in the *scire facias* is pending at any time before final against them, and on paying the costs of the *scire faci* they shall be discharged.

SECT. 13. The principal so surrendered shall be jail, there to remain thirty days in order to his being tion, unless he is discharged as provided in chapter twenty-four.

SECT. 14. The bail may at any time before final him on a writ of *scire facias*, exonerate himself from bility, by surrendering his principal as provided in t sections.

SECT. 15. Such surrender may be made to the 1 either in the county in which the principal was arrested or in any county in which the original writ against the principal was returnable, and the jailer shall receive the prisoner and hold him in custody in like manner as if he had been committed by the officer who arrested him on the original writ.

SECT. 16. The jailer shall not be obliged to receive a person so surrendered, unless the bail delivers to him a copy of the bail bond attested by the officer who took it or the clerk in whose custody it may be. The delivery of such copy shall be a sufficient warrant for the jailer, although the surrender and commitment prove to be unlawful on the part of the bail.

SECT. 17. The bail shall within fourteen days after such surrender deliver to the jailer a copy of the original writ or process whereby the prisoner was arrested, with a copy of the return indorsed thereon, attested by the officer who served the writ or the clerk into whose office it is returned.

SECT. 18. He shall also within the same time give notice in writing to the plaintiff or his attorney, of the time when and the place where the prisoner was so committed.

R. S. 91, § 13.  
11 Allen, 394.

Proceedings in  
such case.  
R. S. 91, § 14.

Same subject.  
R. S. 91, § 16.  
8 Cush. 137.

Notice to plain-  
tiff  
R. S. 91, § 16.  
11 Allen, 394.

Bail to pay costs on *scire facias* when, &c.  
R. S. 91, § 17.  
11 Cush. 16.

SECT. 19. If the surrender is made after a writ of *scire facias* is taken out against the bail, he shall within fourteen days after the surrender pay the costs of suit on the *scire facias* to the creditor or his attorney, or to the jailer for his use: *provided*, that if the writ of *scire facias* has not been served on the bail, he shall not be required to pay the costs thereof until twenty-four hours after he has notice of the issuing of the writ, and after a demand of the costs made on him by the creditor.

Treatment of principal after surrender.  
R. S. 91, § 18.

SECT. 20. Every person surrendered and committed shall be received by the jailer, and held in custody. He may be forthwith bailed, whether notice of the surrender has or has not been given to the plaintiff, and shall in all respects have the same rights and privileges as if committed upon the original arrest.

Principal may be surrendered on the original suit.  
R. S. 91, § 19.

SECT. 21. Nothing contained in the preceding sections shall impair the right of bail, in all cases, to surrender their principal in the court in which the original suit is pending, at any time before final judgment; or, after judgment, to surrender him to the officer holding the execution, at any time before the return thereof.

#### BAIL IN ACTIONS BEFORE JUSTICES OF THE PEACE, &c.

Proceedings on bail bond before a justice of the peace or police court.  
R. S. 91, § 20.

SECT. 22. When bail is taken in an action before a justice of the peace or police court, the justice or court may issue a *scire facias* against the bail, although the amount of the debt and costs on the original judgment exceeds the amount to which his jurisdiction is otherwise limited; and the rights and obligations of the bail, and all proceedings as to the surrender of the principal and the action against the bail, shall be substantially the same as are provided with regard to bail when taken in suits in other courts.

Surrender of principal in such case  
R. S. 91, § 21.

SECT. 23. When the bail in a suit before a justice of the peace or police court proposes to surrender his principal in court, either during the pendency of the original suit or the *scire facias*, he shall procure the attendance of some officer qualified to serve legal process in the case, to whom the principal may be committed.

Officer to attend, if requested.  
R. S. 91, § 22.

SECT. 24. Every such officer who is seasonably notified and requested to attend for the purpose aforesaid, shall attend, and receive and take charge of the principal if committed to his custody by the justice.

Proceedings upon surrender.  
R. S. 91, § 23.

SECT. 25. When the principal is surrendered in such suit, an entry thereof shall be made on the record, and he shall be forthwith committed to the officer in attendance, to be conveyed to jail or otherwise disposed of according to law.

Same subject.  
R. S. 91, §§ 24, 25.

SECT. 26. If the principal is surrendered before final judgment in the original suit, the bail shall deliver to the officer a copy of the original writ, with the return indorsed thereon, attested by the justice. If the surrender is after final judgment in the original suit, the bail shall deliver to the officer a copy of the entry of the surrender, attested in like manner. The officer shall deliver the copy to the jailer, on committing the prisoner to his custody; and such copy shall be a sufficient warrant to the officer and the jailer, for receiving, committing, and holding the prisoner according to law.

Fees of officer.  
R. S. 91, § 26.

SECT. 27. The officer shall be allowed the same fees, to be paid by the bail, as are provided for arresting and committing a defendant on mesne process.

#### SUPPORT OF PRINCIPAL.

When debtor is surrendered by bail and claims support as pauper, &c.  
R. S. 97, § 54.

SECT. 28. When a principal, surrendered by his bail and committed to jail, claims support as a pauper, the jailer may require the plaintiff, or his attorney in the suit, to give security or advance the money for the support of the defendant in like manner as if the commitment had

been made by an officer. If the plaintiff neglects so to do for twenty-four hours after being so required, the jailer may discharge the defendant.

SECT. 29. The jailer in such case may at the time of the surrender demand of the bail the advance of money for the support of the principal or security therefor, instead of demanding the same of the plaintiff; and if the bail neglects, for twenty-four hours after such demand, to give such security or advance the money for the support of the principal, the jailer may discharge him; and the bail and the principal shall thereupon continue liable to the plaintiff in all respects as if the surrender had not been made.

When debtor is surrendered by bail, and claims support as pauper, &c.  
R. S. 97, § 55.

SECT. 30. The bail, if such demand is made of him, shall be liable for the support of the principal until the expiration of seven days after he has given notice of the surrender to the plaintiff or his attorney in the suit.

When bail liable for support of prisoner.  
R. S. 97, § 56.

SECT. 31. The plaintiff shall be liable for the support of the defendant after the expiration of said seven days; and if he neglects to advance the money or give security therefor as before provided at or before the expiration of said time, the jailer may discharge the defendant.

When liability of creditor commences.  
R. S. 97, § 57.

## CHAPTER 126.

[See 1862, 188; 1871, 871.] 1874, 187

### OF PROCEEDINGS AGAINST ABSENT DEFENDANTS AND UPON INSUFFICIENT SERVICE.

#### SECTION

1. Actions against persons out of the state.
2. Plaintiff out of state liable to cross-action, &c.
3. Each of several defendants may have cross-action.
4. Writ, how served in such case.
5. Proceedings in such actions. Following provisions not to apply.
6. Notice to be given to defendant out of state, or whose residence is unknown, &c.
7. If defendant does not appear, &c., after notice, judgment to be rendered, &c.
8. Bond, when to be given by plaintiff, upon default of absent defendant.

#### SECTION

9. Bond, how taken and disposed of.
10. Execution levied on real estate of absent defendant.
11. Judgment in a real action against him.
12. Absence of one of several defendants in actions on tort;
13. in actions on contract.
14. Action may proceed against those served with process.
15. Other joint contractors liable to new action.
16. Absence of one of several tenants in real actions;
17. of one of several defendants in mixed actions.

SECTION 1. No personal action shall be maintained against a person who is out of the state at the time of the service of the summons, unless he had before that time been an inhabitant of the state, or unless an effectual attachment of his goods, estate, or effects, is made on the original writ, except in cases in which it is otherwise specially provided.

Actions against persons out of the state.  
R. S. 90, § 44.  
3 Mass. 420.  
5 Met. 400.  
5 Cush. 52.  
6 Cush. 354.

SECT. 2. When an action is brought by a person who is not an inhabitant of this state or who cannot be found therein to be served with process, he shall be held to answer to any action brought against him here by the defendant in the first action, if the demands in the two cases are of such a nature that the judgment or execution in the one case can be set off against the judgment or execution in the other.

Plaintiff out of state liable to cross-action, &c.  
R. S. 90, § 49.

SECT. 3. If there are several defendants in the original action, each of them may bring such cross-action against the original plaintiff, and may be allowed to set off his judgment against that which may be recovered against himself and his co-defendants in like manner as if the latter judgment had been against himself alone.

Each of several defendants may have a cross-action.  
R. S. 90, § 50.  
4 T. R. 123.  
7 Mass. 140.

SECT. 4. The writ in such cross-action may be served on the person

Writ, how

served in such case.  
R. S. 90, § 51.

Proceedings in such actions.  
Following provisions not to apply.  
R. S. 90, § 52.  
R. S. 92, § 16.

Notice given to defendant out of state.  
R. S. 90, § 53.  
R. S. 92, § 3.  
2 Met. 135, 490.  
5 Met. 403.  
11 Met. 872.  
2 Cush. 33.  
5 Cush. 52.  
6 Cush. 354.  
8 Gray, 509.  
See Ch. 123, §§ 25-28.  
9 Gray, 311.  
10 Gray, 164.  
12 Gray, 193.

If defendant does not appear, &c., after notice, judgment to be rendered, &c.  
R. S. 90, § 53.  
R. S. 92, § 3.  
See Ch. 146, § 20.  
13 Gray, 52.

Bond, when to be given by plaintiff, upon default of absent defendant;  
R. S. 92, § 6.  
19 Pick. 64.  
13 Gray, 1.

how taken and disposed of  
R. S. 92, § 7.

Execution levied on real estate of absent defendant.  
R. S. 92, § 8.

Judgment in a real action against him.  
R. S. 92, § 9.

111 m. 274

Absence of one of several defendants in actions on tort.  
R. S. 92, § 10.

who appears as the attorney of the plaintiff in the original suit, and such service shall be as valid and effectual as if made on the party himself within this state.

SECT. 5. The court in which the actions or either of them are pending may order continuances as they think necessary or proper to enable the absent party to defend the action brought against him, and also to enable either party to set off his judgment or execution against that which is recovered against him, but the actions shall not be unreasonably delayed by the neglect or default of either party. None of the following rules concerning actions brought against persons out of the state shall apply to a cross-action brought under the three preceding sections.

SECT. 6. If a defendant is absent from the state or his place of residence is not known to the officer serving a writ, and no personal service is made on him, or if the service of a writ is defective or insufficient by reason of mistake on the part of the plaintiff or officer as to the place where or the person with whom the summons or copy ought to have been left, the court upon suggestion thereof by the plaintiff shall order the action to be continued from term to term until notice of the suit is given in such manner as the court may direct. In any case in which the defendant does not appear, the court may in their discretion order the action to be continued and further notice given to him in such manner as the court may direct.

4 Allen, 94.

11 Allen, 133.

104 Mass. 371.

105 Mass. 95.

SECT. 7. If, after such notice in either case, the defendant does not appear at the term to which the action is continued, and within the first ten days of the term file such affidavit as he would have been required to file if sufficient legal service had been made upon him before the entry of the action, judgment may be rendered against him upon default.

SECT. 8. When judgment in a personal action is rendered as provided in the preceding section upon the default of a defendant who is out of the state or whose residence is unknown, the plaintiff shall not take out execution thereon within one year thereafter, unless he first gives bond to the defendant with one or more sufficient sureties in a sum equal to double the amount recovered, with condition to repay the amount so recovered if the judgment is reversed, or so much of the amount as shall be recovered back upon a review to be brought by the original defendant at any time within one year after the original judgment.

SECT. 9. The bond shall be deposited to the use of the defendant, and the cost of the sureties, saving a right of appeal, shall be paid out of the court in which the judgment was rendered.

SECT. 10. If the execution in such action is returned, and the plaintiff alienates the same, or as much thereof as he may desire, from retaking the same, or as much thereof as he may desire, to satisfy the judgment he recovers on the writ of review he sued out within or after the year.

SECT. 11. If the original judgment is reversed in a real action, the defendant shall be restored to the possession of the land without giving bond; and if the judgment is reversed upon a review, whether sued out by the original plaintiff or the original tenant may have restitution of the land as upon a reversal on a writ of error.

SECT. 12. In personal actions for damages, if any one of them is out of the state, the court may, in place of the writ, the suit shall be continued, and the service of every thing relating to the service of the writ and execution, in like manner as if the defendant were within the state.

**SECT. 13.** If an action founded on contract is brought against several defendants, of whom any one is within the state and any other is absent, and the plaintiff recovers judgment, he shall take it without any of the conditions and regulations above provided as to review, giving bond, and alienating real estate; but he shall not take judgment against any such absent defendant, unless under such circumstances as would have entitled him to judgment against the absent party if he had been the only defendant in the case.

**SECT. 14.** If an action founded on contract is brought against several defendants, and the writ is duly served on one or more of them, but no legal service is made on the others, either by attachment of property or otherwise, by reason of their absence from the state, or for other sufficient cause, the action may proceed against those who are duly served with process, without further proceedings against the others.

**SECT. 15.** If judgment is rendered against one or more of several joint contractors in the manner provided in the preceding section, and remains unsatisfied, an action on the same contract may be afterwards maintained against any of the other joint contractors, in like manner as if the contract had been joint and several.

**SECT. 16.** In real actions against several tenants, if any one of them is out of the state the suit shall be conducted with regard to him in like manner as if he had been the only person sued.

**SECT. 17.** In mixed actions, if the defendant or any one of two or more joint defendants, is out of the state, the suit shall be conducted with regard to the absent defendant, in every thing relating to the judgment, review, and bond, in the manner before provided with respect to personal actions founded on tort; and in every thing relating to the service of the writ and the notice of the suit to be given to the defendant, it shall be considered and conducted as a real action.

Absence of one of several defendants in actions on contract.  
R. S. 92, § 11.  
16 Gray, 114.

Action may proceed against those served with process.

R. S. 92, § 12.  
8 Mass. 423.  
5 Mass. 198.  
18 Met. 256.  
10 Allen, 490.

Other contractors liable to new action.

R. S. 92, § 13.  
6 Cranch, 254.  
13 Mass. 148.  
10 Allen, 490.

Absence of one of several tenants, &c.;  
R. S. 92, § 14.

of one of several defendants in mixed actions.  
R. S. 92, § 15.

## CHAPTER 127.

### OF ACTIONS WHICH SURVIVE, AND THE DEATH AND DISABILITIES OF PARTIES.

#### ACTIONS WHICH SURVIVE.

##### SECTION

##### 1. Actions which survive.

##### DEATH OF PARTIES IN PERSONAL ACTIONS.

2. Death of officer not to abate suit for goods attached.
3. Judgment in such case for executor, &c.;  
4. against the executor, &c.
5. General provisions as to actions which survive.
6. Executor or administrator may prosecute or defend;
7. may be cited for that purpose.
8. Citation, how served and returned.
9. Executor, &c., not appearing, may be nonsuited or defaulted.
10. Provision as to costs in such cases.
11. Death of joint plaintiff, &c.;
12. of all the plaintiffs or defendants.

##### DEATH OF PARTIES IN REAL AND MIXED ACTIONS.

13. In real or mixed actions devisee or heir may prosecute;
14. jointly with survivor, if any.

##### SECTION

15. When survivors may prosecute alone.
16. Proceedings when tenant dies;
17. when any of several dies.

##### DEATH OF PARTIES IN PETITION FOR PARTITION, &c.

18. Same proceedings in suits in partitions.
19. Except in certain cases.
20. Further exceptions.

##### DEATH OF PARTIES ENTITLED TO APPLY TO COUNTY COMMISSIONERS.

21. If person having right to jury, &c., dies, heirs, &c., may apply.

##### MARRIAGE.

22. Marriage of a female party.

##### INSANITY.

23. Insanity of a party.

##### DEATH OR REMOVAL OF A PUBLIC OFFICER, &c.

24. Death or removal of a public officer, &c.

## ACTIONS WHICH SURVIVE.

**Actions which survive.**

R. S. 14, § 66.  
R. S. 98, § 7.  
1842, 89, § 1.  
1852, 812.  
6 Greenl. 427.  
8 Greenl. 128.  
3 Mass. 228.  
4 Mass. 480.  
7 Mass. 336.  
5 Pick. 257.

**SECTION 1.** In addition to the actions which survive by the common law the following shall also survive: actions of replevin; of tort for assault, battery, imprisonment, or other damage, to the person; for goods taken and carried away or converted by defendant to his own use; or for damage done to real or personal estate; and actions against sheriffs for malfeasance or nonfeasance of themselves or their deputies.

19 Pick. 47. 21 Pick. 250. 6 Met. 94. 4 Cush. 418. 5 Cush. 548. 9 Cush. 108, 478. 7 Gray, 544.  
See Ch. 150, § 85. 14 Gray, 183, 488. 4 Allen, 391. 106 Mass. 145. See 1868, 42.

115 a. 346 ~ 552

## DEATH OF PARTIES IN PERSONAL ACTIONS.

**Death of officer not to abate suit for goods attached.**

R. S. 90, § 98.  
1852, 812.  
See Ch. 128.

**SECT. 2.** When goods or chattels attached by an officer are claimed or taken away by another person, and an action of replevin or tort therefor is brought by or against the officer, the action shall not be abated by the death of either party, but may be prosecuted by or against the executor or administrator of the deceased party.

**Judgment in such case for executor, &c.**  
R. S. 90, § 97.

**SECT. 3.** If judgment in such case is recovered by the executor or administrator of the officer, the goods or money recovered shall be held, appropriated, and disposed of, in the same manner as they would and ought to have been by the officer if he had lived and recovered the same himself.

**against the executor, &c.**  
R. S. 90, § 98.

**SECT. 4.** If judgment is rendered against the executor or administrator of the officer, the goods and damages recovered shall be returned, delivered, and paid in full, by the executor or administrator, if he has sufficient therefor, although the estate of the deceased is insolvent.

**General provision as to actions which survive.**  
R. S. 98, § 1.  
4 N. H. 336.  
18 Allen, 231.

**SECT. 5.** In personal actions, the cause of which survives, if there is only one plaintiff or defendant, and the sole plaintiff or defendant dies after the commencement of the action at any time before final judgment, the action may proceed and be prosecuted by or against the surviving party, and the executor or administrator of the deceased party, in the manner provided in this chapter.

**Executor or administrator may prosecute or defend.**  
R. S. 98, § 2.

**SECT. 6.** The action or an appeal therein may be entered in such cases, if not already entered, and the death of the party suggested on the record; and his executor or administrator may, at the same term or within such further time as the court shall allow, appear and take upon himself the prosecution or defence of the suit; and it shall be thenceforth conducted in the same manner as if it had been originally commenced by or against the same executor or administrator.

**may be cited for that purpose.**  
R. S. 98, § 3.  
18 Allen, 231.

**SECT. 7.** If the executor or administrator does not voluntarily appear, the surviving party may take out a citation from the court or justice of the peace before whom the case is pending, requiring the executor or administrator to appear and take upon himself the prosecution or defence of the action.

**Citation, how served and returned.**  
R. S. 98, § 4.

**SECT. 8.** The citation if taken in at the same or the next succeeding term, or taken in vacation, it shall be returned by a justice of the peace, or police such time as the justice or court shall allow, at least fourteen days before the return of the citation.

**Executor not appearing, &c., may be nonsuited or defaulted.**  
R. S. 98, § 5.

**SECT. 9.** If the executor or administrator does not appear, or turn of the citation, or within such time as the court shall allow, he shall be nonsuited or defaulted, and judgment shall be rendered against him in like manner as if he had been personally commenced by or against him, in the following section.

**Provision as to costs in such case.**  
R. S. 98, § 6.

**SECT. 10.** When an executor or administrator takes upon himself the prosecution of the action, he shall not be personally liable for costs in the case, if the deceased in his hands shall be liable for or damages if any are recovered.

SECT. 11. When there are several plaintiffs or defendants in a personal action the cause of which survives, and any of them die before final judgment, the action shall proceed at the suit of the surviving plaintiff, or against the surviving defendant, as the case may be.

Death of joint-  
plaintiff, &  
R. S. 98  
7 Green  
4 Pick. 8  
7 Pick. 65.  
9 Pick. 528.  
of all the pla-  
tiffs or defend-  
ants.  
R. S. 98, § 18.  
9 Pick. 522.

SECT. 12. If in such case all the plaintiffs or all the defendants die, the action may be prosecuted or defended by or against the executor or administrator of the last surviving plaintiff or defendant respectively, in like manner as if the survivor had been originally the only plaintiff or defendant.

DEATH OF PARTIES IN REAL AND MIXED ACTIONS.

SECT. 13. In real and mixed actions, if the demandant dies before final judgment, his heir or devisee of the land demanded or of the right of action may, at the same term when the death is suggested, or within such further time as the court shall allow, appear and prosecute the suit in the same manner as if it had been originally commenced by him. And in case of a devise, if the first estate in possession under the devise is not a fee simple, the devisee of the first freehold estate in possession shall have the right to appear and prosecute, and the judgment if in his favor shall be conformed to his title.

In real and mixed  
actions devisee or  
heir may prose-  
cute;  
R. S. 98, § 14.  
1852, 312, § 55.  
10 Met. 294.  
12 Met. 501.  
1 Cush. 395.  
8 Gray, 154.  
12 Gray, 317.  
18 Gray, 272.

SECT. 14. If there are several demandants, and any of them die before final judgment, the heir or devisee of the deceased party shall be admitted, on motion, to prosecute the suit jointly with the survivors, in the same manner as if he had originally joined with them in commencing the suit.

Jointly with  
survivor, if any;  
R. S. 98, § 15.  
10 Mass. 190.  
11 Mass. 66.

SECT. 15. If the interest of the deceased party passes to the surviving demandants, or if there is no motion for the admission of another person as heir or devisee at the term when the death of the deceased party is suggested, or within such further time as the court shall allow, the surviving demandants may prosecute the suit for so much of the premises in question as may then be claimed by them.

or survivor  
may prosecute  
alone.  
R. S. 98, § 16.

SECT. 16. If the tenant dies before final judgment, his heir or devisee of the land demanded, may at the term when the death is suggested, or within such further time as the court shall allow, appear and take upon himself the defence of the suit, which shall thenceforth be conducted in the same manner as if it had been originally commenced against him. If the heir or devisee does not voluntarily appear, the demandant may take out a citation from the court before whom the cause is pending, requiring him to appear and take upon himself the defence of the suit.

Proceedings  
when tenant  
dies;  
1855, 364, §§ 1, 2.

SECT. 17. When any of several tenants in a real or mixed action die before final judgment, the action may be prosecuted against the surviving tenants for so much of the premises as they hold or claim.

when any of  
several dies.  
R. S. 98, § 17.  
2 Mass. 480.  
2 Pick. 28.  
19 Pick. 243.

DEATH OF PARTIES IN PETITIONS FOR PARTITION, &c.

SECT. 18. The same proceedings as are prescribed in the five preceding sections shall be had in all petitions and actions for partition of lands, in case of the death of any of the parties, except as is provided in the two following sections.

Same proceedings  
in suits for par-  
tition.  
R. S. 98, § 18.  
2 Mass. 479.  
10 Mass. 5.  
12 Gray, 317.  
Except in certain  
cases.  
R. S. 98, § 19.

SECT. 19. If upon the death of either of several plaintiffs or petitioners in a suit for partition the interest of the deceased party passes to the surviving plaintiffs or petitioners, or to any person admitted to join them in the suit, it shall be prosecuted in the manner before provided respecting real actions; but if the interest of the deceased party passes to any person not so admitted as a plaintiff or petitioner, such person may by order of the court be made a defendant or respondent, and the same proceedings may be had against him as would have been necessary to make him an original defendant or respondent.

Further excep-  
tions.  
R. S. 93, § 20.

SECT. 20. If upon the death of either of several defendants or respondents the interest of the deceased party passes to the surviving defendants or respondents, the suit may proceed against them without any new process; but if the interest of the deceased party passes to any other person, that person may be made a defendant or respondent in the manner prescribed in the preceding section.

#### DEATH OF PARTIES ENTITLED TO APPLY TO COUNTY COMMISSIONERS.

If person having  
right to jury,  
&c., dies, heirs,  
&c., may apply.  
1856, 228.

SECT. 21. When a person having a right to apply to county commissioners for a jury to assess damages or to hear and determine any other matter, dies without so applying and within the time limited therefor, his executor, administrator, heir, or devisee, if interested, may, within one year after his interest vests in him, make such application in the same manner, with the same effect, as if made by the deceased in his lifetime.

#### MARRIAGE.

Marriage of a fe-  
male party.  
R. S. 93, § 21.  
1855, 804.  
1857, 249.  
14 Mass. 296.  
17 Mass. 842.

SECT. 22. If an unmarried woman who is a party to a suit either alone or with others marries before final judgment, she may continue to prosecute or defend the suit in like manner as if she were sole, and her husband need not be admitted as a party thereto.

#### INSANITY.

Insanity of a  
party.  
R. S. 93, § 22.  
18 Mass. 412.  
5 Pick. 481.  
8 Allen, 311.

SECT. 23. If during the pendency of an action or suit either party becomes insane, the action may be prosecuted or defended by his guardian in like manner as if it had been commenced after the appointment of the guardian, or the court may appoint a guardian for the suit, as the case may require.

#### DEATH OR REMOVAL OF A PUBLIC OFFICER, &c.

Death or removal  
of a public officer,  
&c.  
R. S. 13, § 24.  
R. S. 93, § 23.  
R. S. 100, § 25.  
2 Mass. 440.  
12 Mass. 576.  
2 Met. 47.  
6 Cush. 290.

SECT. 24. An action on a note, bond, contract, or other liability made to or with the treasurer of the commonwealth, or of a county, city, town, parish, or other corporation, or to or with any other public officer, or trustee appointed under a statute, may after his removal, resignation, or death, be commenced or if before commenced, may be prosecuted by his successor as it might have been prosecuted if he had remained in office when the contract was made.

## • CHAI

### OF ACTIONS BY AND AGAINST

#### SECTION

1. Actions which survive may be commenced against executor, &c.
2. Damages recoverable in tort against executor, &c.
3. Recovery by executor, &c., in right of other.
4. Goods returned on replevin by executor, not to be assets.
5. Writs against executors, &c., how run.



SECTION 1. All actions which would have survived if commenced by or against the original party in his lifetime, may be commenced and prosecuted by and against his executors and administrators.

SECT. 2. When an action of tort is commenced or prosecuted against the executor or administrator of the person originally liable, the plaintiff shall be entitled to recover only for the value of the goods taken, or for the damage actually sustained, without any vindictive or exemplary damages, or damages for any alleged outrage to the feelings of the injured party.

SECT. 3. When the executor or administrator of a trustee, carrier, depositary, or other person, who claimed only a special property in goods to hold them for the use and benefit of another, recovers such goods or damages for the taking or detention thereof in an action of replevin or tort, the goods or money recovered shall not be considered as assets in his hands, but shall after deducting the costs and expenses of the suit be paid over and delivered to the person for whose use and benefit they were so held or claimed by the deceased person.

SECT. 4. When judgment for a return in an action of replevin is rendered against an executor or administrator, the goods returned by him shall not be considered as assets in his hands; and if they have been included in the inventory, it shall be a sufficient discharge for the executor or administrator to show that they have been returned in pursuance of such judgment.

SECT. 5. Writs of attachment and executions against executors or administrators for debts due from the deceased testator or intestate, shall run only against the goods and estate of the deceased in their hands, and not against their bodies, goods, or estate.

SECT. 6. When a judgment for costs is rendered against an executor or administrator in an action commenced by or against him, or in an action commenced by or against the testator or intestate, wherein the executor or administrator has appeared and taken upon himself the prosecution or defence, he shall be personally liable for the costs.

SECT. 7. When judgment is recovered against an executor or administrator for costs only, the execution shall be awarded against his body, goods, and estate, as if it were for his own debt.

SECT. 8. When the judgment is for debt or damages, and costs, an execution for the debt or damages shall be awarded against the goods and estate of the deceased in the hands of the executor or administrator, and another execution for the costs, against the goods, estate, and body, of the executor or administrator, as if it were for his own debt.

SECT. 9. Costs paid by executors or administrators, and for which they are made personally liable, shall be allowed in their administration accounts, unless the probate court decides that the suit was prosecuted or defended without reasonable cause.

SECT. 10. When an execution against an executor or administrator for a debt due from the estate of the deceased is returned unsatisfied, the creditor may upon a suggestion of waste sue out a *scire facias* against the executor or administrator. If the defendant does not appear and show sufficient cause to the contrary, he shall be deemed guilty of waste, and shall be personally liable for the amount thereof, when it can be ascertained, otherwise for the amount due on the original judgment, with interest from the time when it was rendered; and judgment and execution shall be awarded as for his own debt.

SECT. 11. When an executor or administrator dies or is removed from office during the pendency of a suit in which he is a party, the suit may be prosecuted by or against the administrator *de bonis non* in like manner as if it had been originally commenced by or against such last administrator.

Actions against executor, &c.  
R. S. 93, § 8.  
See Ch. 127, § 1.  
100 Mass. 146.  
See 1845, 13.

Damages recoverable in tort against executor, &c.  
R. S. 93, § 9.  
1852, 312.  
4 Pick. 218.

Recovery by executor, &c., in right of another.  
R. S. 93, § 10.  
1852, 312.

Goods returned on replevin by executor, &c., not to be assets.  
R. S. 93, § 11.

Writs against executors, &c., how to run.  
R. S. 110, § 1.

Executor, &c., when personally liable for costs.  
R. S. 110, § 2.  
16 Mass. 530.

Execution in such case.  
R. S. 110, § 3.

Same subject.  
R. S. 110, § 4.

Costs to be allowed to them, &c.  
R. S. 110, § 5.

*Scire facias* against executor, &c., on suggestion of waste.  
R. S. 110, § 6.  
See Ch. 120, § 8.

Death of executor, &c., pending suit.  
R. S. 110, § 7.  
4 Mass. 611, 618.  
7 Allen, 427.

Proceedings in case of death of executor, &c., pending the suit.  
R. S. 110, § 8.

Death of executor, &c., after judgment.  
R. S. 110, § 9.

Writ of error in such case.  
R. S. 110, § 10.  
4 Mass. 611, 613.  
7 Allen, 427.

SECT. 12. The proceedings in such case, with respect to the appearance of the administrator *de bonis non*, whether voluntarily or upon a citation, and with respect to his nonsuit or default if he does not appear, shall be conducted in the manner prescribed in chapter one hundred and twenty-seven upon occasion of the death of either party during the pendency of a suit.

SECT. 13. If an executor or administrator dies or is removed after judgment is rendered either for or against him, a *scire facias* may be sued out either by or against the administrator *de bonis non*, and a new execution may be issued in like manner as it may be done by or against an original executor or administrator, in case of the death of his testator or intestate after a judgment rendered for or against him; except that a judgment against the first executor or administrator for costs for which he was personally liable, shall be enforced only against his executor or administrator, and not against the administrator *de bonis non*.

SECT. 14. When a judgment is rendered for or against an executor or administrator, a writ of error may be brought thereon by or against an administrator *de bonis non* in like manner as it might have been brought by or against the executor or administrator who was party to the judgment.

## CHAPTER 129.

### OF PLEADINGS AND PRACTICE.

#### PLEADINGS.

##### *Forms at Law.*

##### SECTION

##### 1. Forms of actions.

##### *Declarations, &c.*

2. Forms of declaring at law. Substantial facts only required. One count for each cause, but any number of breaches. What counts and causes of action may be joined. Common counts, how used. When account annexed may be used. Trover abolished. Written instruments, how declared on. If lost, substance to be stated. Bonds and other conditional contracts, how declared on.

3. In real actions on mortgage, &c.

4. Declarations, &c., where persons are severally liable on contracts in writing.

5. Mode of referring to statutes.

6. Plaintiff's close to be described in tort, &c.

7. No declaration in writ in actions of contract or tort unless, &c.

8. Declaration to be filed first day of court;

9. If not in writ or filed, action discontinued, unless, &c.

10. Bill of particulars, when required.

##### *Demurrers.*

11. Demurrer;

12. causes of, specified. Certificate.

##### *Answers, Replications, &c.*

13. Answer in abatement, &c.

14. When answer in abatement overruled.

15. Special pleas in bar abolished, and general issue, except, &c.

16. Joint answer.

##### SECTION

17. Substantive facts denied, &c.

18. Answers and denials, when and how made.

19. Must declare whether whole or part is denied.

20. Each substantive fact relied on to be clearly stated. When answer sets up any legal bar, &c.

21. Written instruments set out, &c.

22. Conditional obligations set out, &c.

23. No pleading after answer, but by order of court. Plaintiff may demur, and in certain cases reply.

24. Further pleading, demurrer, &c. Joinder in demurrer, &c.

25. Facts occurring since suit. Supplemental declaration, &c.;

26. may be alleged alternatively.

*Amendments.*

## SECTION

40. Amendments, &c., upon matter in abatement;  
 41. changing parties, form, &c.;  
 42. after judgment.

*Defaults.*

43. Defendant, when defaulted.  
 44. Default may be taken off at first term.  
 45. Defendant to be defaulted unless affidavit filed of substantial defence.

*Interrogatories.*

46. Parties may file interrogatories, &c.  
 47. Affidavit to be annexed to interrogatories.  
 48. Answers to be filed;  
 49. in writing and on oath.  
 50. Officers of corporation may be examined.  
 51. Each interrogatory to be answered.  
 52. Parts of books, &c., called for, containing matter not pertinent, may be sealed up, &c.  
 53. Party not obliged to criminate himself, &c.  
 54. Irrelevant matter to be expunged. Answer to be full, &c.  
 55. Costs, when answer irrelevant, &c.  
 56. If party disobeys order, court may enter non-suit or default.  
 57. Court may allow interrogatories filed, during trial.

*Interlocutory Orders.*

58. Court may order statement of grounds of action, &c.  
 59. Orders, &c., preparatory to trial.

*Agreements of Parties.*

60. Orders may be entered by consent, &c.; agreements of attorneys to be in writing.  
 61. Parties may agree respecting continuances, filing papers, &c.

*Offer of Judgment.*

62. Defendant may offer judgment. Plaintiff may accept with costs. Time to elect.

*Hearing, Trial, Evidence.*

## SECTION

63. If plaintiff does not accept, nor recover greater sum, defendant allowed costs.  
 64. Demurrers, how heard, determined, &c.;  
 65. frivolous or immaterial may be overruled.  
 66. Jury trial may be waived.  
 67. Exceptions. New trial. Review.  
 68, 69. Trials not to be delayed or postponed.  
 70. Local action in wrong county, court may non-suit.  
 71. Counts not proved, &c., may be stricken out.  
 72. Pleadings, &c., not evidence.  
 73. Offer of judgment not accepted, not evidence.  
 74. Answers to interrogatories may be read at trial by the other party, &c.  
 75. One matter in answer not evidence of another.  
 76. Justification in slander not proof of malice.  
 77. Truth of alleged libels may be given in evidence, &c.  
 78. In action on judgment by default, court may allow evidence of payment.

*Arrest of Judgment.*

79. No arrest of judgment for cause before verdict, except, &c.

*General Provisions.*

80. Suggestions entered on record  
 81. Rules of evidence not changed, &c.  
 82. Cause of action; amendment; notice to parties, appeal, &c.  
 83. Affidavits. When corporation is a party.  
 84. Provisions, not applicable to real and mixed actions, except, &c.  
 85. Specified sections to apply to civil actions before justices and police courts, &c.  
 86. Interrogatories in actions before police courts, &c., may be filed, &c.

*Forms.*

87. Forms authorized. May be altered by S. J. C.

[\* applies to civil actions before justices of the peace and police courts. See § 85.

† applies to real and mixed actions. See § 84.

‡ applies to municipal court of Boston. See 1867, 355, § 2.

§ applies to first district court of Eastern Worcester, and the district court of East Norfolk. See 1872, 190, 239.]

## PLEADINGS.

*Forms at Law.*

\*SECTION 1. There shall be only three divisions of personal actions:

First. Actions of contract, which shall include those heretofore known as actions of assumpsit, covenant, and debt, except for penalties.

Second. Actions of tort, which shall include those heretofore known as actions of trespass, trespass on the case, trover, and all actions for penalties.

Third. Actions of replevin.

*Declarations, &c.*

\*SECT. 2. The form of declaring in personal actions shall be according to the following particulars:—

First. The action shall be named in conformity with the divisions specified in section one.

Second. No averment need be made which the law does not require to be proved.

Third. The substantive facts necessary to constitute the cause of action may be stated with substantial certainty, and without unnecessary verbiage.

1 Allen, 521. 6 Allen, 283, 410. 8 Allen, 309, 355. 9 Allen, 358. 99 Mass. 631. 105 Mass. 534.

Forms of actions.  
 1852, 312, § 1.  
 10 Gray, 382.  
 2 Allen, 320.  
 98 Mass. 224.  
 103 Mass. 190.

Form of declaring at law.  
 1852, 312, § 2.

5 Gray, 22, 543.  
 9 Gray, 74.

Substantial facts only required.  
 4 Gray, 446.  
 7 Gray, 186.  
 10 Gray, 361.  
 13 Gray, 332.

11196. 152

One count for each cause, but any number of breaches.  
9 Allen, 557.

What counts and causes of action may be joined.

7 Gray, 562.  
18 Gray, 533.  
2 Allen, 224.  
4 Allen, 504.  
97 Mass. 29.

114 Mass. 373

Common counts, how used.  
7 Gray, 184, 187.  
99 Mass. 1.

When account annexed may be used.

112 Mass. 264  
115 Mass. 444

4 Gray, 292.  
7 Gray, 184, 187.  
9 Allen, 856.  
99 Mass. 1

Trover abolished.

2 Gray, 564.

Written instruments, how declared on

If lost, substance to be stated.

1 Gray, 544.  
11 Gray, 10.  
14 Gray, 129.  
108 Mass. 44, 880.

Bonds and other conditional contracts, how declared on.

In real actions on mortgage.

1852, 812, § 2.  
14 Gray, 109.  
103 Mass. 479.

Declarations, &c., where persons are severally liable on contracts in writing

1852, 812, § 3.  
4 Gray, 294.  
7 Gray, 284.  
11 Gray, 897.  
5 Allen, 11.  
13 Allen, 19.  
104 Mass. 219.

Mode of referring to statutes.  
R. S. 100, § 20.

Plaintiff's close

Fourth. One count only need be inserted for each cause of action, but any number of breaches may be assigned in each count, and when the nature of the case requires it breaches may be assigned in the alternative. Two causes of action, not arising on the same contract, shall not be embraced in one count, except the count on an account annexed as hereinafter provided.

Fifth. Any number of counts for different causes of action belonging to the same division of actions may be inserted in the same declaration. Actions of contract and actions of tort shall not be joined; but when it is deemed doubtful to which of those classes a particular cause of action belongs, a count in contract may be joined with a count in tort, averring that both are for one and the same cause of action.

99 Mass. 535.

103 Mass. 489.

104 Mass. 807.

Sixth. The common counts shall not be used unitedly, but each one of those counts may be used in the form hereinafter prescribed when the natural import of its terms correctly describes the cause of action.

Seventh. A count on an account annexed, in the form hereinafter prescribed, may be used in an action of contract, when one or more items are claimed either of which would be correctly described by any one of the common counts according to the natural import of its terms.

Eighth. In place of the form of declaration heretofore used in the action of trover, the form hereinafter prescribed shall be used.

Ninth. All written instruments except policies of insurance shall be declared on by setting out a copy or such part as is relied on, or the legal effect thereof, with proper averments to describe the cause of action. If the whole contract is not set out, a copy or the original, as the court may direct, shall be filed on motion of the adverse party. Where it may be necessary, the copy so filed shall, if the court so order, be part of the record, as if oyer had been granted of a deed declared on according to the common law. No profert or excuse therefor need be inserted in a declaration. If the instrument relied on is lost or destroyed, or is not in the power of the party who relies on it, he shall state the substance of it as nearly as he can, and the reason why a copy is not given.

Tenth. When a bond, or other conditional obligation, contract, or grant, is declared on, the condition shall be deemed part of the obligation, contract, or grant, and shall be set forth; breaches relied on shall be assigned; and conditions precedent to the right of the party relying thereon shall be averred to have non-performance thereof stated.

†SECT. 3. In real actions found shall allege the seisin to be "in m

\*SECT. 4. Persons severally liable all parties to bills of exchange and them be joined in the same action count only, describing the several same contract was made by each different contracts of the defendant indorser, the same contract was in such order for the separate trial convenient, and shall enter sever contracts of the defendants, and in case may require.

†\*SECT. 5. A general statute in other pleadings by specifying the referred to, or mentioning in general referring to it in such manner as the statute intended.

\*SECT. 6. In actions of tort for

close, the place of the alleged trespass shall be designated in the plaintiff's declaration by name, abutments, or other proper description.

¶**SECT. 7.** In actions of contract and actions of tort, unless an arrest of the person is made, the writ need not contain a declaration, nor any description of the cause of action in which it is intended to declare, other than the name of the form thereof.

1 Allen, 273.

9 Allen, 257.

104 Mass. 219.

See 1862, 20, § 1.

¶**SECT. 8.** The declaration may be filed in the clerk's office on or before the day to which the writ is returnable, unless an arrest of the person is made. If there is an attachment of property, the declaration and bill of particulars, when necessary, if not inserted in the writ, shall also be furnished to the defendant or his attorney within three days after he has demanded the same in writing of the plaintiff or his attorney.

¶**SECT. 9.** If no declaration has been inserted in the writ or filed in the clerk's office pursuant to the preceding section, it shall be a discontinuance of the action, and the defendant or trustee may have judgment for costs: *provided*, that the court may at any time during the return term of the writ, for good cause shown and upon suitable terms, allow the plaintiff to file his declaration, and the action shall not be discontinued if the declaration is filed in accordance with the provisions of this section.

\***SECT. 10.** In actions of contract, when either of the common counts is used, the plaintiff shall file a bill of particulars with his writ when the action is entered. The items in such bill shall be numbered consecutively, and it shall be deemed to be part of the record and be answered or replied to as such.

to be described, in tort, &c.  
1839, 151, § 3.  
13 Met. 109, 144.  
97 Mass. 419.  
Declaration need not be in writ, unless, &c.:  
1852, 312, § 7.

to be filed first day of court;  
1852, 312, § 8.  
1854, 440, § 1.  
1 Gray, 448.  
7 Gray, 409.  
See 1862, 20, § 2.

If not in writ or filed, action discontinued, unless, &c.  
1852, 312, § 9.  
1854, 440, § 1.  
1 Gray, 448.  
5 Gray, 9.  
See 1862, 20, § 3.

Bill of particulars when required.  
1852, 312, § 4.  
3 Gray, 296.  
12 Gray, 222.  
100 Mass. 152.

### *Demurrers.*

¶**SECT. 11.** To raise an issue in law, the answer shall contain a statement that the defendant demurs to the declaration or to some one or more counts therein, as the case may be, and shall assign specially the causes of demurrer.

¶**SECT. 12.** Demurrers may be for the following, among other causes:—

First. That counts in contract and in tort, or either with replevin, or a count in the plaintiff's own right and a count in some representative capacity, are improperly joined in the declaration.

Second. That the declaration or some count thereof, as the case may be, does not state a legal cause of action substantially in accordance with the rules contained in this chapter.

Third. That the answer does not state a legal defence to the declaration or some count thereof, as the case may be, substantially in accordance with such rules.

The particulars in which the alleged defect consists shall be specially pointed out, and the attorney, if any, shall certify upon the demurrer, that he is of opinion that there is such probable ground in law therefor as to make it a fit subject for judicial inquiry and trial, and that it is not intended merely for delay.

### *Answers, Replications, &c.*

¶**SECT. 13.** Any defence to a real, personal, or mixed action, which might have been made by plea in abatement, may be made by answer containing such allegations or denials as may be necessary to constitute such defence.

¶**SECT. 14.** When an answer in abatement is overruled on demurrer, or an amendment is allowed and made by the plaintiff in consequence of such answer in abatement, the defendant shall then answer, or in a

Demurrer;  
1852, 312, § 17.  
7 Gray, 484.  
See §§ 64, 65.  
15 Gray, 184. 113 m. 34  
1 Allen, 560.  
2 Allen, 105, 268.  
causes of, specified.  
Certificate.  
1852, 312, §§ 21, 30.  
4 Gray, 448.  
6 Gray, 233.  
7 Gray, 484.  
12 Cuth. 484.  
1 Allen, 193.  
4 Allen, 141.  
5 Allen, 441.  
6 Allen, 226, 419.  
8 Allen, 355.  
11 Allen, 283.  
100 Mass. 195.

Answer in abatement, &c.:  
1852, 312, § 27.  
4 Gray, 88.  
12 Gray, 347.  
6 Allen, 25.

when overruled on demurrer, &c.  
1852, 312, § 29.  
4 Gray, 88.

Pleas abolished,  
except &c.  
1838, 273, § 1.  
1852, 312, § 12.  
19 Pick. 455.  
21 Pick. 404.  
3 Met. 235, 417.  
6 Met. 68, 268.  
13 3/4 Met. 34.

Joint answer.  
1852, 312, § 18.  
11 Gray, 14.  
8 Allen, 78.

Substantive  
facts denied, &c.  
1852, 312, § 14.  
2 Gray, 521.  
3 Gray, 220, 262,  
344.  
5 Gray, 457, 543.  
6 Gray, 494.

Answers, &c.,  
when and how  
made;  
1852, 312, § 15.  
2 Gray, 521.  
5 Gray, 457, 541.

must declare  
whether whole  
or part is denied,  
1852, 312, § 16.  
6 Gray, 543.

to set forth  
each substantive  
fact;  
1852, 312, § 18.  
4 Gray, 52, 443.  
6 Gray, 494.  
7 Gray, 342.  
11 Gray, 10, 358.  
13 Gray, 157.  
14 3/4 Met. 27.  
when written  
instruments are  
relied on, &c.,  
1852, 312, § 2.

when condi-  
tional obliga-  
tions, &c.  
1852, 312, § 2.  
10 Allen, 400.

No pleading  
after answer,  
but by order  
of court.  
Plaintiff may  
demur, and in  
certain cases  
reply.  
1852, 312, § 19.  
4 Gray, 117.  
7 Allen, 239.  
97 Mass. 502.  
102 Mass. 556.  
103 Mass. 28.

Further plead-  
ing, demurrer,  
&c.  
1852, 312, § 20.  
6 Gray, 223.

real or mixed action plead, to the  
shall order.

§ SECT. 15. Special pleas in bar  
the general issue in all except r  
thereof the defendants shall file a  
and mixed actions the defendant m.  
issue all matters which might form  
8 Met. 237. 7 Cush. 503. 4 Gra  
12 Met. 154. 12 Cush. 259. 6 Gra

§ SECT. 16. Two or more defend  
answer jointly. Different consiste  
in the same answer.

§ SECT. 17. The answer shall de  
substantive fact intended to be de  
separately, or shall declare the def  
he can neither admit nor deny, t  
same.

7 Gray, 184, 263.  
5 Allen, 599. 7 Allen, 61, 435. 10 Allen, 400

SECT. 18. In answering the or  
account annexed, the defendant sh  
tained in the bill of particulars o  
one and the same allegation or de  
to which such allegation or denia  
of the items thus answered togeth  
defendant denies that any item is  
plaintiff as alleged, he shall state  
he intends to rest such denial, and  
part or the whole of such item or

§ SECT. 19. In all cases in which  
or otherwise, concerning a time,  
party denying shall declare wheth  
time, sum, quantity, or place, or n  
tity, or place, he admits.

§ SECT. 20. The answer shall se  
each substantive fact intended to  
action; and when the answer sets u  
of frauds, or any other legal bar, th  
the benefit of such defence by reaso  
in the declaration.

\*SECT. 21. Written instrument  
subsequent allegation, shall be set  
filed, in the manner prescribed in  
they are declared on.

\*SECT. 22. When a conditional  
on in an answer or subsequent alle  
a part of the instrument, and sir  
pleading on the same as are requir

§ SECT. 23. No further pleading  
except by order of the court as here  
may demur to the answer; and if  
in avoidance of the action, such nev  
by the plaintiff; or the court may  
the plaintiff to reply thereto, and  
and if any what part thereof. Th  
such order, at any time before t  
clearly and specifically stating an  
therein.

§ SECT. 24. The replication may  
ment that the plaintiff demurs to t  
plies to one or more counts in the  
ing specially the causes of such dem

may demur to the allegation of the other party. But no defect of form merely, either in the declaration or subsequent allegation, shall be assigned as a cause of demurrer. The opposite party shall be deemed to join in demurrer if he shall not amend, which he may do within such time, and upon such terms, as the court may allow.

†SECT. 25. An answer or replication may allege facts which have occurred since the institution of the suit, and the plaintiff and defendant may be allowed by the court to make a supplemental declaration, answer, or replication, alleging material facts which have occurred or come to the knowledge of the party since the former declaration, answer, or replication.

†SECT. 26. Either party may allege any fact or title alternatively, declaring his belief of one alternative or the other and his ignorance whether it be the one or the other.

†SECT. 27. The allegations and denials of each party shall be so construed by the court as to secure as far as possible substantial precision and certainty, and discourage vagueness and loose generalities. Any substantive fact alleged with substantial precision and certainty, and not denied in clear and precise terms, shall be deemed to be admitted. No party shall be required to state evidence or to disclose the means by which he intends to prove his case.

4 Allen, 380, 577. 7 Allen, 61, 239, 361, 435. 11 Allen, 527. 100 Mass. 217. 101 Mass. 417.

†SECT. 28. A suit shall be deemed at issue when the allegations are closed, or if it be a real or mixed action, when the plea is filed.

6 Allen, 407.  
97 Mass. 502.

Joinder in demurrer.

Facts occurring since suit. Supplemental declaration, &c.; 1852, 312, § 24. 106 Mass. 55.

may be alleged alternatively. 1852, 312, § 25.

Pleadings so construed as to give certainty, &c. 1852, 312, § 23. 1 Gray, 450. 4 Gray, 65, 446. 5 Gray, 645. 7 Gray, 186, 268. 9 Gray, 78. 14 Gray, 109. 1 Allen, 580. Suit, when at issue. 1852, 312, § 31.

#### PRACTICE.

##### *Indorsement of Process after Entry.*

\*†SECT. 29. If a plaintiff in any writ, suit, or process at law or in equity after its commencement removes from the state, the court where the suit is pending, on motion of any other party, shall, and in all cases when it appears reasonable may, require the plaintiff to procure a sufficient indorser.

1 Gray, 114. 12 Gray, 190. 99 Mass. 460.

\*†SECT. 30. If an indorser removes from the state or is insufficient, the court if it appears reasonable may require the plaintiff to procure a sufficient indorser.

Indorser, when required; R. S. 90, § 10. R. S. 100, § 23. R. S. 112, § 24. 18 Pick. 236. 19 Pick. 379. 21 Pick. 212. removing, &c., another required; R. S. 90, § 12.

†SECT. 31. The supreme judicial court may require an indorser or security for the payment of costs in any probate or insolvent case or proceeding in that court.

may be required in probate cases, &c. 1846, 234.

\*†SECT. 32. If the plaintiff fails in any case to procure an indorser according to the order of the court, the suit shall be dismissed and the defendant recover his costs.

If not procured, suit dismissed; R. S. 90, § 13.

\*†SECT. 33. The court in which any suit is pending may permit the name of an indorser to be stricken out and a new and sufficient indorser to be substituted. Every indorser shall be liable for costs from the commencement of the suit, in like manner as indorsers before the entry of an action.

8 Met. 149. See Ch. 123, § 20. 1 Allen, 276, 402.

may be substituted. Liability. R. S. 90, §§ 11, 12. 6 Mass. 494. 7 Mass. 26. 13 Mass. 422.

##### *Abatement.*

\*†SECT. 34. No writ, process, declaration, or other proceeding, in the courts or course of justice, shall be abated, arrested, quashed, or reversed, for any circumstantial errors or mistakes, when the person and case may be rightly understood by the court, nor through defect or want of form only.

5 Cush. 78. 4 Allen, 145. 10 Allen, 537. 104 Mass. 364. 105 Mass. 138.

\*†SECT. 35. When the defendant in an action of contract answers in abatement the nonjoinder of any other person as defendant, the court may, at any time before issue joined on such answer, allow the plaintiff on such terms as they shall prescribe to amend his declaration by inserting therein the name of any other person as defendant, and declaring against him jointly with the original defendant.

No writ, &c., abated for circumstantial errors. R. S. 100, § 21. 5 Met. 211. 2 Cush. 491, 555. 4 Cush. 280. If defendant pleads nonjoinder, new defendants joined. R. S. 100, § 1. 1852, 312, § 27. 7 Gray, 69.

Proceedings  
where new de-  
fendants are  
joined.  
R. S. 100, § 2.  
6 Allen, 360.

Same subject.  
R. S. 100, §§ 2, 4.

Judgment, exe-  
cution, &c., in  
such case.  
R. S. 100, § 5.

Final judgment  
upon issue of  
fact.  
1852, 812, § 28.  
24 Pick. 51.  
8 Met. 420.

Amendments;  
1852, 812, § 28.  
12 Gray, 189.  
14 Gray, 564.  
8 Allen, 69, 532.  
7 Allen, 209, 489.  
9 Allen, 267.  
12 Allen, 187.

changing par-  
ties, form, &c.;  
R. S. 98, § 24.  
R. S. 100, §§ 6, 7.  
22 1836, 278, § 8.  
1839, 151, §§ 1, 2.  
1852, 812, § 32.  
18 Pick. 412.  
1 Met. 558.  
2 Met. 505.  
8 Met. 8.  
12 Met. 298.  
13 Met. 215, 476.  
2 Cush. 1, 496,  
492, 555.

after judgment.  
R. S. 100, § 28.  
10 Mass. 251.  
8 Cush. 11, 78.  
5 Cush. 78, 443.  
104 Mass. 364.

111 M. 160

Defendant, when  
defaulted.  
R. S. 92, § 1.

Default may be  
taken off at first  
term.  
R. S. 92, § 2.

Defendant to be  
defaulted last  
day, or in ten  
days, unless af-

\*†SECT. 36. The plaintiff may thereupon take out a new writ in such form as the court prescribes, which shall be in the nature of an original writ of *capias* and attachment, or of summons, and shall require the new defendant to appear and answer as a defendant in the original action. Upon such writ the new defendant's body may be arrested, or his goods or estate may be attached, as upon an original writ; and the writ shall be returnable at such time as the court shall order, and be served fourteen days at least before the return day.

\*†SECT. 37. Upon the return of such new writ, every defendant named therein upon whom service has been made shall be bound to appear and answer with the other defendants, in the same manner as if he had been originally made a party in the first writ. If service cannot be made on a defendant, the action may proceed against the other defendants, in the manner provided in chapter one hundred and twenty-six.

\*†SECT. 38. Judgment shall be rendered and execution shall issue for either party, in the same manner as if the original writ had been issued against all the defendants; and the plaintiff shall have the same benefit of any attachment or bail upon each of said writs, as if the same had been made or taken in the usual manner upon the original writ.

††SECT. 39. If an issue of fact upon an answer in abatement is found against the defendant, a final judgment shall be rendered against him in the manner heretofore required by law in case of a plea in abatement.

### Amendments.

[See 1865, 179.]

††SECT. 40. No action shall be defeated by plea or answer in abatement, if the defect found is capable of amendment, and is amended on terms prescribed by the court. The defendant may have leave to amend an answer in abatement, or to answer over by special order of the court, for good cause shown, and not otherwise.

\*†SECT. 41. At any time before final judgment in a civil suit, amendments may be allowed, on such terms as are just and reasonable, introducing any party necessary to be joined as plaintiff or defendant, discontinuing as to any joint plaintiff or defendant, changing the form of the action, and in any other matter either of form or substance in any process, pleading, or proceeding, which may enable the plaintiff to sustain the action for the cause for which it was intended to be brought, or the defendant to make a legal defence.

8 Cush. 413. 1 Gray, 600. 5 Gray, 71. 9 Gray, 65. 5 Allen, 322, 303. 101 Mass. 579.  
4 Cush. 280. 8 Gray, 71. 7 Gray, 41, 381. 1 Allen, 244, 501, 529. 8 Allen, 68. 106 Mass. 335.  
8 Cush. 271, 366. 4 Gray, 438. 8 Gray, 487. 2 Allen, 128, 120, 317, 587. 100 Mass. 246.

\*†SECT. 42. After judgment in any civil action, defects or imperfections in matter of form found in the and amended by the court in w court to which it is removed b quires it, and if the amendment

\*†SECT. 43. If a defendant be pear, his default shall be recor be taken to be true, and judgme

\*†SECT. 44. If after such defa pears before the jury is dismis and allow the appearance to be plaintiff's costs up to that time think reasonable.

†SECT. 45. (8.) [In all action superior court, the court shall a day of the writ, or as of course



a default as against any defendant on whom legal service has been made, unless the defendant or some one in his behalf has filed within said ten days, or on or before the last day of said term when the same does not exceed ten days, an affidavit that he verily believes that the defendant has a substantial defence to the action on its merits, and intends to bring the same to trial: *provided*, that upon good cause shown the time for filing such affidavit may be extended for such reasonable time as the court may order.]

### Interrogatories.

[In equity cases, see 1862, 40.]

†\*SECT. 46. In civil actions the plaintiff may at any time after the entry of the action, and the defendant at any time after answer, or if it be a real or mixed action after plea, and before the case is opened to the jury, file in the clerk's office interrogatories for the discovery of facts and documents material to the support or defence of the suit, to be answered on oath by the adverse party.

3 Allen, 110. 5 Allen, 109. 18 Allen, 320. 100 Mass. 320. 104 Mass. 27. 106 Mass. 338.

†\*SECT. 47. To such interrogatories there shall be annexed an affidavit of the interrogating party or his attorney, to the effect that he has reason to believe that the party interrogating will derive some material benefit in the action from the discovery which he seeks, if the same be fairly made, and that the discovery is not sought for the purpose of delay.

†\*SECT. 48. Such interrogatories shall be answered and the answers filed in the clerk's office within ten days after the same are notified to the party interrogated or his attorney, unless upon cause shown either before or after the lapse of ten days further time is allowed by the court.

†\*SECT. 49. The answers shall be in writing, signed by the party and upon his oath.

†\*SECT. 50. If the party to a suit is a corporation, the opposite party may examine the president, treasurer, clerk, or any director or other officer thereof, in the same manner as if he were a party to the suit.

†\*SECT. 51. Each interrogatory shall be answered separately and fully. The party interrogated may introduce into his answer any matter relevant to the issue to which the interrogatory relates.

†\*SECT. 52. When any document, book, voucher, or other writing, called for by an interrogatory, contains matters not pertinent to the subject matter of the action, the answer may so state, and that such part has been sealed up or otherwise protected from examination; and thereupon such part shall not be inspected by the party interrogating; but such party may apply to the court and obtain an order to have liberty to inspect the part so protected from examination, or so much thereof as the court shall find on hearing the parties, or if necessary by inspecting the part so protected, was improperly withheld and concealed.

†\*SECT. 53. The party interrogated shall not be obliged to answer a question or produce a document the answering or producing of which would tend to criminate himself, or disclose his title to any property the title whereof is not material to the trial of the action in the course of which he is interrogated; or to disclose the names of the witnesses by whom or the manner in which he proposes to prove his own case.

†\*SECT. 54. If an answer contains irrelevant matter or is not full and clear, or if an interrogatory is not answered, and the party interrogated refuses to expunge or amend, or to answer a particular interrogatory, the court or any justice thereof may on motion order such irrelevant matter to be expunged, or such imperfect answer to be made full and clear, or such interrogatory to be answered, within such time as may seem reasonable.

†\*SECT. 55. When an answer is adjudged irrelevant or insufficient, or when a party is ordered to answer an interrogatory, such order may be

affidavit filed of substantial defence.  
1862, 312, § 10.  
1860, 186.  
7 Gray, 40.  
12 Gray, 347.  
18 Gray, 460.  
99 Mass. 406.  
(8.) For substitute see 1870, 68.

In civil actions parties may file interrogatories, &c.  
1862, 312, § 61.  
11 Cush. 26, 74.  
2 Gray, 568.  
7 Gray, 417.  
8 Gray, 529.  
14 Gray, 494.

Affidavit to be annexed to interrogatories.  
1862, 312, § 62.  
2 Gray, 568.

Answers to be filed;  
1862, 312, § 63.  
11 Cush. 158, 537.

in writing, and on oath.  
1862, 312, § 65.

Officers of corporation may be examined.  
1862, 312, § 66.  
100 Mass. 320.

Each interrogatory to be answered.  
1862, 312, § 67.  
3 Gray, 220.  
8 Gray, 529.  
18 Allen, 320.

Parts of books, &c., called for, containing matter not pertinent, may be sealed up, &c.  
1862, 312, § 68.

Party not obliged to criminate himself, &c.  
1862, 312, § 69.  
2 Gray, 578.  
5 Allen, 109.  
104 Mass. 27.

Irrelevant matter to be expunged.  
Answer to be full, &c.  
1862, 312, § 70.

Costs when answer irrelevant, &c.

109th. 1487  
111th. 154

109th. 212

109th. 209

1852, 312, § 71.

Nonsuit, &amp;c., if party disobeys order.

1852, 312, § 72.

8 Gray, 116.

7 Gray, 417.

Court may allow interrogatories filed, during trial.

1852, 312, § 74.

18 Allen, 320.

made respecting costs, either in the action or otherwise, as the court may direct by general rules or by a special order in each case.

\*†SECT. 56. If a party neglects or refuses to expunge, amend, or answer, according to the requisition of this chapter, the court may enter a nonsuit or default as the case may require, and proceed thereon according to law.

\*†SECT. 57. During the trial of any action the court may allow interrogatories to be filed, to be answered forthwith, or with as little delay as practicable, and may suspend the trial for the purpose of having the same answered; but such interrogatories must be accompanied by an affidavit stating the reasons why they were not filed earlier; and unless the court upon the whole matter finds that due diligence has been used, the interrogatories shall not be filed.

### *Interlocutory Orders.*

Court may order statement of grounds of action, &amp;c.

1852, 312, § 4.

8 Gray, 206.

11 Allen, 288.

Orders, &amp;c., preparatory to trial, when made.

1852, 312, § 35.

\*SECT. 58. The court may in all cases order either party to file a statement of such particulars as may be necessary to give the other party, and the court, reasonable knowledge of the nature and grounds of the action or defence.

†SECT. 59. Orders allowing amendments before trial, or a supplemental answer or replication, or enlarging time, and any other interlocutory order necessary to prepare the case for trial, may be made by the court while in session, or any justice thereof, in any county, either in term time or vacation; but the several courts shall prescribe such fixed rules respecting notice, the times and places for motions at chambers, and other matters, as they shall from time to time deem necessary.

### *Agreements of Parties.*

Orders may be entered by consent, &amp;c.

1852, 312, § 30.

8 Allen, 45.

Parties may agree respecting continuances, filing papers, &amp;c.

1852, 312, § 33.

†SECT. 60. Any of the orders mentioned in the preceding section may be entered by consent in writing signed by the parties or their attorneys. All agreements of attorneys touching any suit or proceeding shall be in writing; otherwise they shall be of no validity.

†SECT. 61. If the parties agree to continue a case without cost until the next term it shall be continued accordingly; but the court may by a general or special order regulate the case shall stand at the next term respecting amendments and the shall be equivalent to an order

### *Offer*

Defendant may offer judgment. Plaintiff may accept, with costs.

Time to elect.

1852, 140, § 1.

See § 73.

97 Mass. 148.

\*SECT. 62. When a defendant wherein damages only are sought consents in writing to be defaulted against him, as damages for a sum entered of record together with the plaintiff may at any time with notice of such offer and consent accept judgment accordingly, with costs; such notice, the court shall for a time to elect, he may signify his assent, and judgment shall be rendered within ten days.

If plaintiff does not accept, &amp;c., defendant allowed costs.

1852, 140, § 2.

See § 73.

102 Mass. 122.

\*SECT. 63. If the plaintiff do not accept, the plaintiff shall not recover a greater sum than the sum recovered by the defendant shall have judgment

which execution shall issue, and the plaintiff, if he recovers damages, shall be allowed his costs only to the date of the offer.

### *Hearing, Trial, Evidence.*

†SECT. 64. Every demurrer may in the first instance be heard by a single justice, and if taken in term time during the same term if practicable; and his decision as to the misjoinder of counts shall be final, an amendment being allowed as herein provided. But if the cause of demurrer is that the facts do not in point of law support or answer the action, and the party against whom the decision is made does not pray for leave to amend, such decision shall not be final, but the demurrer may be further heard upon appeal or otherwise, as is provided in respect to such questions of law. When a demurrer is sustained, overruled, or withdrawn, the court shall make such order as may be fit, respecting the filing of an answer or replication, or a trial of the facts.

†SECT. 65. If a demurrer appears to the judge who first hears the same to be frivolous, immaterial, or intended for delay, he may besides overruling it order the party to plead, answer, or reply, notwithstanding such party claims the right to be further heard by appeal or otherwise on his demurrer; and thereupon the case shall proceed to a final judgment as if no demurrer had been filed, and execution may be awarded or stayed on such terms as the court may deem reasonable, as in cases of exceptions adjudged frivolous.

†SECT. 66. In all civil actions trial by jury may be waived by the consent in writing of the several parties or their counsel filed with the clerk at any time before the trial, and the cause shall thereupon be heard and determined by the court, and judgment entered as in case of verdict by a jury. 1 Allen, 389. 2 Allen, 610. 3 Allen, 212, 583. 4 Allen, 510. 9 Allen, 159.

†SECT. 67. Either party may file exceptions to the decisions and rulings of the court upon matters of law arising upon such trial, move for a new trial for mistake of law or for newly discovered evidence, and be entitled to review, in the same manner and with the same effect as upon trial by jury.

†SECT. 68. A trial shall not be delayed for want of a reply to the defendant's answer, unless by special order of the court; nor shall an agreement of parties respecting filing amendments or papers operate to postpone the trial of an action beyond the time at which by the rules of the court it would be tried.

\*†SECT. 69. A trial shall not be delayed for the reason that interrogatories have been filed and the time allowed for answering the same has not elapsed, but the court may allow an examination during the trial as is herein before provided.

†SECT. 70. When it appears on a trial that a local action has been brought in an erroneous venue, the court may of its own motion order a nonsuit to be entered, unless good cause shall be shown why the trial should be allowed to proceed.

†SECT. 71. If the plaintiff fails to give evidence at the trial in support of any count in the declaration not wholly or partly confessed by the answer, it shall forthwith be stricken out. And the court may, either of their own motion or upon motion of a party, require unnecessary counts and statements to be stricken out of a declaration or any subsequent proceeding, and may impose reasonable terms.

\*†SECT. 72. Neither the declaration, answer, nor any subsequent allegation, shall be deemed evidence on the trial, but allegations only whereby the party making them is bound.

\*†SECT. 73. No offer or consent, made in pursuance of sections sixty-two and sixty-three, which is not accepted, shall be evidence against the party making the same, either in any subsequent proceeding in the

Demurrers, how heard, determined, &c.; 1852, 312, § 23. 4 Gray, 42. 7 Gray, 427. 10 Gray, 501. 2 Allen, 130. See 1862, 40.

frivolous or immaterial may be overruled, &c. 1852, 312, § 23. 4 Gray, 62.

Jury trial may be waived, and cause heard by court. 1857, 267, § 1. 10 Gray, 400. 12 Gray, 401. 13 Gray, 228. 1874, 248 115m. 129

Exceptions. New trial. Review. 1857, 267, § 2. 106 Mass. 54, 344.

Trials not to be delayed or postponed. &c. 1852, 312, §§ 19, 88.

Same subject 1862, 312, § 64.

Local action in wrong county. 1852, 312, § 80. See Ch 183, § 14. 102 Mass. 370.

Counts not proved, &c. may be stricken out. 1852, 312, § 5. 3 Allen, 471.

Pleadings not evidence. 1852, 312, § 75. 12 Allen, 449. 13 Allen, 72, 400. Offer of judgment not accepted, not evidence.

1852, 140, § 3.

Answers to interrogatories may be read at trial, &c.  
1852, 312, § 73.  
11 Cush. 28, 74.  
3 Gray, 115.  
100 Mass. 320.

109 M. 209

One matter in answer not evidence of another.  
R. S. 100, § 18.  
1852, 312, § 75.  
5 S. & R. 411.

Justification in slander not proof of malice.  
R. S. 100, § 19.  
15 Mass. 45.  
1 Pick. 1.

Truth of alleged libels may be given in evidence, &c.  
1855, 395.

In action on judgment by default, court may allow evidence of payment, &c.  
1859, 185.  
12 Allen, 97.  
100 Mass. 96.

action or suit in which such offer or suit.

\*†SECT. 74. The answer of each party read at the trial by the other party : may require that the whole of the answer inquired of shall be read, if a part read, the party interrogated shall in ination, or of the fact that he has been

\*†SECT. 75. When a defendant answers in defence, no averment, confession, or of them shall be used or taken as evidence on any issue joined on any other of the

2 N. H. R. 89.

18 Met. 253.

7 Cush. 1

\*SECT. 76. If the defendant in a libel, justifies that the words spoken or published were true, such allegation, though not maintained by the evidence, shall not be of itself proof of the malice alleged in the declaration.

\*†SECT. 77. In every prosecution and or for publishing a libel, the defendant the truth of the matter contained libellous; and such evidence shall be unless malicious intention shall be proved.

\*†SECT. 78. In any action upon a judgment without the knowledge of the defendant and upon such terms as it deems reasonable show in defence any payment, satisfaction, claim, prior to the obtaining of such judgment which in either case he might have shown in original suit: *provided*, such action is a rendition of such judgment.

### Arrest of Judgment

No arrest of judgment for cause before verdict, except, &c.  
1852, 312, § 22.  
12 Cush. 454.  
1 Gray, 172.  
4 Gray, 204.  
7 Gray, 648.  
13 Gray, 325.

110 M. 317

\*†SECT. 79. A judgment shall not be before the verdict, unless the same affects the cause. And when the defendant has appeared to the action, no defect in the writ or other process brought before the court, or in the set-off, shall affect the jurisdiction of the court.

1 Allen, 244.

98 Mass. 334.

104 Mass. 371

### General Provisions

Suggestions entered on record.  
R. S. 93, § 24.

Rules of evidence not changed, &c.  
1852, 312, § 8.  
2 Gray, 565.  
5 Allen, 579.  
99 Mass. 621.  
102 Mass. 506.

Cause of action, amendment, notice to parties, appeal, &c.  
1852, 312, § 83.  
3 Allen, 623.  
5 Allen, 323.  
7 Allen, 202.

\*†SECT. 80. When a change happens in the parties, the court may allow such suggestions on record as circumstances may require.

\*†SECT. 81. The provisions of this chapter shall not change any rule of evidence, the measures of any court, or the locality of any action, herein specially provided for.

\*†SECT. 82. The cause of action shall be stated in the declaration, and the court shall determine that it is the cause of action required by law. And the court shall determine whether the action was commenced, however the cause of action may be amended, and the adjudication of the court allowing or refusing to amend shall be conclusive evidence of the identity of the cause of action. And no subsequent attaching creditor, or purchaser of the property, or any person other than the defendant, shall be bound by such adjudication, unless he has applied for leave to amend and

according to an order of notice to that effect to be issued by the court upon application of the plaintiff, and such third parties shall have the right to except or appeal.

\*†SECT. 83. When a party to any suit or proceeding under this chapter is a corporation, all precepts, answers, replications, or other papers, requiring the signature or oath of the party, may be signed or sworn to in behalf of the corporation by some officer or agent thereunto specially authorized.

*Affidavits.* When corporation is a party.  
1862, 312, § 89.

SECT. 84. None of the foregoing provisions, except those contained in sections three, five, eight, nine, twelve, sixteen, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-nine, sixty, sixty-one, sixty-four, sixty-five, sixty-six, sixty-seven, so much of sixty-eight as relates to agreement of parties, sections sixty-nine, seventy, seventy-two, seventy-three, seventy-four, seventy-five, seventy-seven, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, and eighty-seven shall be deemed applicable to real or mixed actions, unless specially named.

*Provisions not applicable to real and mixed actions, except, &c.*  
1862, 312, § 61.  
See §§ noted thus f.

SECT. 85. Sections one, two, four, five, six, ten, twenty-one, twenty-two, twenty-nine, thirty, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, forty-one, forty-two, forty-three, forty-four, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, sixty-two, sixty-three, sixty-nine, seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-six, and eighty-seven, only, of this chapter shall apply to civil actions before police courts and justices of the peace.

*Specified sections to apply to civil actions before justices and police courts, &c.*  
1862, 312, § 87.  
See §§ noted thus f.  
6 Allen, 25.  
Re 1867, 355, § 2.  
1872, 199, 230.

\*SECT. 86. In actions before such police courts or justices of the peace, the interrogatories and answers provided for in sections forty-six, forty-eight, and sixty-nine, may be filed before said courts or justices respectively. They may be filed by either party, at any time after the commencement of the action, and the answers shall be filed within such time as such courts or justices of the peace shall respectively order.

*Interrogatories in actions before police courts, &c., may be filed, &c.*  
1862, 312, § 90.

### [Forms.]

\*†SECT. 87. The forms contained in the schedule annexed to this chapter may be used in the several courts, subject to be changed and modified from time to time by the supreme judicial court, by general rules made for the purpose.

*Forms authorized.* May be altered by S. J. C.  
1862, 312, § 84.

#### SCHEDULE OF FORMS.

##### *Forms of Declarations in Actions of Contract.*

*Commencement.* To answer to A. B. of —, in an action of contract.

If the plaintiff is a minor and sues by *prochein ami*, as administrator, or in any special character, it may be stated according to the established form. As it is not necessary to insert the declaration in the writ, it should be entitled, when filed separately, in the following form:—

*Forms of declarations.*  
10 Gray, 329.

A. B. }  
vs. Middlesex, Sup. Ct.  
C. D. } Plaintiff's declaration.

*Count for money had and received.*— And the plaintiff says the defendant owes him one hundred dollars for money received by the defendant to the plaintiff's use;—

14 Allen, 69.

*Money lent.*— And the plaintiff says the defendant owes him one hundred dollars for money lent by the plaintiff to the defendant;—

*Goods sold.*— Also that the defendant owes him — dollars for goods sold by the plaintiff to the defendant;—

*Work.*— Also that the defendant owes him — dollars for work done by the plaintiff for the defendant;—

9 Allen, 355.

**Forms of declarations.**

1 Allen, 373.

*Work and materials.* — Also that the defendant owes him — dollars for work done and materials found by the plaintiff for the defendant; —

*Board.* — Also that the defendant owes him — dollars for board and lodging furnished by the plaintiff for the defendant; —

*Freight.* — For the carriage of certain goods by the plaintiff for the defendant; —

*Warehouse room.* — For warehouse room furnished by the plaintiff for the storage of certain goods of the defendant; —

*Horse and carriage hire.* — For the use of a certain horse and carriage hired of the plaintiff by the defendant; —

9 Allen, 357.

*Use and occupation.* — For the use and occupation of a certain tenement hired of the plaintiff by the defendant; —

15 Gray, 298.

*Indivisi composuisse.* — For the balance found due to the plaintiff by the parties on accounting together; —

11 Allen, 123.

115 N. 44

*Account annexed.* — And the plaintiff says the defendant owes him fifty dollars, according to the account hereto annexed.

*Payee of Note against Maker.*

13 Gray, 392.

10 Allen, 553.

And the plaintiff says the defendant made a promissory note payable to the plaintiff or order, a copy whereof is hereto annexed. And the defendant owes the plaintiff the amount of said note and interest thereon.

*On Note payable to Bearer.*

And the plaintiff says the defendant made a promissory note, a copy of which is hereto annexed, payable to one G. H. or bearer. And the plaintiff is the bearer of said note, and the defendant owes him the amount of said note and interest thereon.

(If payments are indorsed on the note, the declaration should be varied as follows: "A copy whereof, with the indorsements thereon, is hereto annexed, and the defendant owes the plaintiff the balance of said note and interest thereon.")

If payments have been made which are not indorsed on the note, the allegation should be varied accordingly.)

*By Indorsee against Indorser.*

And the plaintiff says that one C. D. made a promissory note, a copy of which with the indorsements thereon is hereto annexed, payable to said E. F., or order; and said E. F. indorsed the same to the plaintiff; and payment of said note was duly demanded of said C. D., who neglected to pay the same, and due notice of its non-payment was given to said E. F.; and said E. F. owes the plaintiff the amount of said note and interest thereon.

*On a Bond with Condition to pay certain Debts of the Plaintiff, and to provide for his Support.*

And the plaintiff says the defendant executed to him a bond, a copy whereof is hereto annexed:

And the plaintiff says he owed to one O. P. the sum of one hundred dollars on a promissory note (describing it) which the defendant neglected to pay:

Also that he owed to one R. S. on a promissory note (describing it) which the defendant neglected to pay:

Also that the defendant neglected to provide for the plaintiff's support:

And the plaintiff has requested the defendant to provide for his support as mentioned in said bond —

(To be inserted, if proof of the request is made.)

*By Grantee against Grantor in a conveyance.*

And the plaintiff says the defendant executed to him a conveyance, a copy whereof is hereto annexed:

And the defendant was not seized of the premises (describing them) but the same was held as if he were seized, and was not free from encumbrances, but the payment of six hundred dollars:

And the defendant has not warranted the premises free from all persons' claims, but one W. claims the same to be his:

And the plaintiff says the parties hereto annexed, referred the matters in dispute to an award, a copy whereof is hereto annexed:

(Aver performance of condition by plaintiff, and non-performance by defendant, which is required.)

(If it is for the mere payment of money aver as follows :—)  
And the defendant owes the plaintiff the amount of said award.

Forms of declarations.

*On a Promise to pay the Debt of another.*

And the plaintiff says that one E. F. owed him the sum of — for —, and the plaintiff was about to sue the said E. F. to recover the same :

And in consideration that the plaintiff would forbear to sue said E. F., the defendant made an agreement to pay the same to the plaintiff, a copy whereof is hereto annexed ; and the plaintiff did forbear to sue said E. F., and the defendant owes him said sum.

*On an Agreement to convey Land on a certain Day, Plaintiff to pay One Hundred Dollars Cash, and give a Note for Four Hundred Dollars, secured by a Mortgage of the Land.*

And the plaintiff says the defendant made an agreement with the plaintiff, in writing, a copy whereof is hereto annexed :

And on the — day of —, the plaintiff tendered to the defendant one hundred dollars, and also a note for four hundred dollars, (describing it,) and a mortgage of said land, to secure the payment of said note, and demanded of the defendant a conveyance of said land, (following the terms of the agreement.)

*For Breach of Promise of Marriage.*

And the plaintiff says that she and the defendant mutually promised to marry each other.

And she has always been ready to marry the defendant, but the defendant refuses to perform his promise.

*Non-Delivery of Goods sold.*

And the plaintiff says he purchased of the defendant the following goods, viz.: — for the sum of one hundred dollars, to be paid therefor on delivery thereof; and the defendant promised to deliver the same on the — day of —, at the defendant's store in —:

And on said day the plaintiff demanded said goods at said store, and tendered to the defendant said sum of one hundred dollars in payment of the same :

And the defendant refused to deliver the same to the plaintiff.

*On Policies of Insurance.*

1. *On a ship for a total loss.*

And the plaintiff says the defendants made to him a policy of insurance, a copy of which is hereunto annexed, for the sum of ten thousand dollars, on the ship John, against the perils of the seas, and other perils therein mentioned, in a voyage from Boston to Cadiz, in Spain, and at and from Cadiz to her port of discharge in the United States ; and while proceeding on said voyage, the ship was wrecked and totally lost by the perils of the seas ; and the defendants had notice of said loss on the — day of —, and were bound to pay the amount of said loss to the plaintiff within sixty days after said notice ; and the defendants owe the plaintiff therefor said sum of ten thousand dollars.

2. *For a partial loss and contribution to a general average.*

(State, as in the last count to the description of the voyage inclusive.)

And in said policy the defendants agreed that in case of any loss or misfortune to said ship, it should be lawful for the plaintiff and his agents to labor for, and in the defence and recovery of, said ship, and that the defendants would contribute to the charges thereof in proportion as the sum assured by them should be to the whole sum at risk :

And while proceeding on said voyage said ship was by the perils of the seas dismantled, and otherwise damaged in her hull, rigging, and appurtenances, and it was necessary, for the preservation of said ship and her cargo, to throw over a part of her cargo, and the same was thrown over for that purpose, and the plaintiff was obliged to expend the sum of two thousand dollars for repairing said ship at Cadiz, and the sum of five hundred dollars as a contribution for the loss occasioned by throwing over a part of said cargo ; and the ship suffered much other damage that was not repaired at Cadiz ; — and the defendants had notice of said loss and charges, on the — day of —, and were bound by the terms of said policy to pay the same within sixty days after such notice, and the defendants owe the plaintiff therefor the sum of — dollars.

*For a total loss of cargo by fire :*

And the plaintiff says the defendants made to him a policy of insurance for the sum of ten thousand dollars, on the cargo of the brigantine William, against the perils of fire and other perils therein mentioned, at and from Boston, and in a voyage from thence to Hamburg, or any other port or ports in the north of Europe ; and while said brigantine was proceeding on said voyage, the cargo was totally destroyed by fire ;

Forms of declarations.

and the defendants had notice of said loss on the ——— day of ———, and were bound by the terms of said policy to pay the plaintiff the amount of said loss; and the defendants owe the plaintiff therefor the sum of ten thousand dollars.

*Forms of Declarations in Actions of Tort.*

10 Gray, 382.

*Beginning.* — To answer A. B., of ———, in an action of tort.

*Trover.* — And the plaintiff says the defendant has converted to his own use one horse, the property of the plaintiff, (or the goods mentioned in the schedule hereto annexed.)

(The *ad damnum* is a sufficient allegation of damage in all cases in which special damages are not claimed.)

1 Allen, 207.  
3 Allen, 251.

*Deceit.* — And the plaintiff says the defendant sold to him ten bags of coffee, and to induce the plaintiff to buy the same the defendant falsely represented to him that said coffee was the property of the defendant; and the plaintiff believing that said representation was true, was thereby induced to purchase and did purchase said coffee, and paid therefor to the defendant the sum of one hundred dollars; and said coffee was not the property of the defendant, which the defendant then knew, but was the property of one A. S., who has taken the same from the plaintiff.

And the plaintiff says the defendant sold him a horse, for which the plaintiff paid him one hundred dollars. And to induce the plaintiff to buy said horse the defendant falsely represented to the plaintiff that said horse was sound, so far as the defendant knew; and the plaintiff, believing that said representation was true, was thereby induced to buy, and did buy, said horse; and said horse was not sound, but had a certain disease called ———, which the defendant then knew.

And the plaintiff says the defendant, to induce the plaintiff to sell property on credit to one S. C., falsely represented to the plaintiff in writing, that said S. C. was a man possessed of a large property and able to pay his debts, (a copy of which writing is hereto annexed.) And thereupon the plaintiff, believing said representation to be true, was induced to sell, and did sell, to said S. C., the goods mentioned in the account hereto annexed, and gave the said S. C. credit for the price of said goods, being ——— dollars, for the term of six months from the ——— day of ———. And said S. C. was not a man of property, nor able to pay his debts, but was insolvent, which the defendant then knew. And the plaintiff has not been paid for said goods, and is unable to obtain payment therefor of said S. C.

*Negligence of Railroad Corporations.* — And the plaintiff says the defendants are a corporation owning a railroad between A. and B.; that plaintiff was a passenger on said railroad, and, by reason of the insufficiency of an axle of the car in which he was riding, the plaintiff was hurt; that defendants did not use due care in reference to said axle, but plaintiff did use due care.

(This form may be varied to adapt it to many cases, simply by changing the allegation as to the cause of the accident. It is not intended to restrict a party to the statement of one cause, if there were several concurrent causes, and if the plaintiff is in doubt which of several different causes occasioned the accident, he may, under section twenty-six, so declare.)

10 Allen, 15.

*Negligence of Town.* — And the plaintiff says there is in the town of ——— a public highway leading from ——— to ——— repair; — that the same was negligently repaired whereby the plaintiff, travelling thereon, was injured.

*Obstructing Way.* — And the plaintiff says there was a way leading to the plaintiff's land, and there was a way leading to the land of the defendant erected a fence across the same, whereby the plaintiff could not use the same.

*Immoderate Riding.* — And the plaintiff says the defendant rode a horse from Boston to Cambridge, and the defendant rode said horse so fast that the horse was greatly injured in value.

6 Gray, 33.  
6 Gray, 405.  
8 Gray, 161.  
9 Gray, 264.  
10 Gray, 250.  
97 Mass. 1.  
98 Mass. 225.

*Slander.* — And the plaintiff says the defendant maliciously, accused the plaintiff of the substance as follows. (Here set out the substance of the slander.)

(If the natural import of the words, or reference to facts understood by the jury, stated, in either of those cases, after the words are stated, contain a concise and clear statement of the words spoken. This rule is applicable to libel.)

*Libel.* — And the plaintiff says the defendant published and uttered a false and malicious libel against the plaintiff, to wit: (describing it) a false and malicious libel.

(Or if it be a picture, it may be described.)



*Trespass to Person.*—And the plaintiff says the defendant made an assault upon him, and struck him on his head, and kept him imprisoned for the space of one day.

*Trespass to Land.*—And the plaintiff says the defendant forcibly entered the plaintiff's close, (describing it,) and ploughed up the soil, &c., and took and carried away fifty bushels of the plaintiff's corn there being, and converted the same to his own use.

*Penalty.*—And the plaintiffs say they had a turnpike-road, (describing it,) and the defendant passed on said road with a wagon, on which he carried a load of more than forty-five hundred pounds, and the felloe of said wagon were less than three inches and a half wide, whereby the defendant became liable to pay the plaintiffs three times the legal toll therefor, and the legal toll therefor is the sum of ———.

And the plaintiff says the defendants had a turnpike-road, (describing it,) and the plaintiff was passing over the same and through a turnpike-gate thereon, (describing it,) in a wagon drawn by one horse; and the defendants' toll-gatherer then demanded and received of the plaintiff fifty cents for toll, for passing through said gate with said horse and wagon, the legal toll for passing as aforesaid being only ten cents, whereby the defendants have forfeited to the plaintiff a sum not exceeding one hundred dollars.

And the plaintiffs say they had an aqueduct, (describing it,) and the defendant maliciously injured said aqueduct by cutting off one of the pipes thereof, whereby the defendant became liable to pay the plaintiffs treble the amount of the damage thereby sustained by the plaintiffs; and the amount of said damage was ten dollars.

And the plaintiffs say that the twentieth day of October last was the day of their cattle show and exhibition; and that by their officers they defined and fixed bounds of sufficient extent for the erection of cattle-pens and yards, and for convenient passage-ways to and about the same, within which bounds no persons were permitted to enter and pass unless in conformity with the regulations of said officers: Of all which the defendant had notice; and after said notice the defendant did enter and pass within said bounds, contrary to said regulations, whereby he has forfeited to the plaintiffs a sum not exceeding five dollars.

#### Answers in Abatement.

A. B. } Middlesex, Sup. Ct.  
vs. } Defendant's Answer.  
C. D. }

Forms of  
answers.

*Coverture of Plaintiff.*—And the defendant comes and says that when the plaintiff's writ was sued out, the plaintiff was a married woman, and that E. F., her husband, was then alive, and therefore he ought not to be held to answer to the plaintiff's writ.

*Nonjoinder.*—And the defendant comes and says that if he is indebted to the plaintiffs for the goods mentioned in their bill of particulars, he is indebted to them jointly with one G. H., who is still alive, and ought to be sued with him in the writ, and therefore he ought not to be held to answer to the plaintiff's writ.

*Misnomer.*—And the defendant comes and says the plaintiff's name is John Stiles, and not James Stiles, and therefore he ought not to be held to answer to the plaintiff's writ.

*Coverture of Defendant.*—And the defendant comes and says that when the plaintiff's writ was sued out, she was and still is a married woman, and that J. H., her husband, was then alive, and therefore she ought not to be held to answer to the plaintiff's writ.

#### Answers in Actions of Contract.

A. B. } Middlesex, Sup. Ct.  
vs. } Defendant's Answer.  
C. D. }

*Money had and received.*—And the defendant comes and upon his personal knowledge denies that he received the money mentioned in the plaintiff's bill of particulars, or any part thereof:

(Or, if the case be so) admits that he received the money mentioned in the plaintiff's declaration, but denies that he received it to the plaintiff's use.

And the defendant comes and says, upon his personal knowledge, that he received the money mentioned in the plaintiff's bill of particulars, but upon his information and belief he denies that he received the same or any part thereof to the plaintiff's use.

And the defendant comes and upon his personal knowledge denies that he has received to the plaintiff's use the money mentioned in the plaintiff's bill of particulars, except the sum of fifty dollars.

*Statute of Limitations.*—And the defendant comes and answers that the cause of action mentioned in the plaintiff's writ did not accrue within six years before the suing out of the plaintiff's writ.

*Payment.*—And the defendant comes and answers that he has paid the plaintiff the sum of ——— dollars, which was the full amount of the account stated in the plaintiff's bill of particulars.

If there are several items, add—And he annexes hereto a bill of particulars of said payment.

*Account annexed. Goods sold and delivered.*—And the defendant comes and answers

**Forms of answers.** as follows, viz. : as to the first ten items of the plaintiff's bill of particulars, upon his personal knowledge he denies that the plaintiff sold and delivered the same to the defendant.

As to the eleventh item, upon his personal knowledge he denies that the price was to be more than ten dollars.

*Work.* — As to the twelfth item, he is ignorant personally, and by information and belief, whether the plaintiff performed the day's labor there charged or not, and also of the price thereof, if any, so that he can neither admit nor deny the plaintiff's allegation, but leaves the plaintiff to prove the same.

#### *Answers to a Promissory Note.*

*Promissory Note.* — And the defendant comes and answers as follows : —

He denies that he made the promissory note mentioned in the plaintiff's first count :

*Minority.* — And as to the note mentioned in the plaintiff's second count, he says that at the time of making the same he was a minor under the age of twenty-one years.

*Duress.* — And as to the contract mentioned in the plaintiff's third count, he says that at the time of its execution he was kept in imprisonment by the plaintiff, and executed the contract through the force of that imprisonment.

*Part Payment.* — And the defendant comes and says that he has paid the note mentioned in the plaintiff's writ, except the sum of fifty dollars, and

*Tender.* — before the plaintiff sued out his writ he tendered to the plaintiff said sum of fifty dollars, and now brings the same into court for the plaintiff.

*Accord.* — And the defendant comes and says he delivered to the plaintiff one wagon, which the plaintiff received in full satisfaction of the note mentioned in the plaintiff's writ.

*Res Judicata.* — And the defendant comes and says that at the supreme judicial court, held, &c., the plaintiff recovered judgment against the defendant for ——— dollars and ——— cents damages, and ——— for costs ; and that said judgment was rendered upon the same cause of action mentioned in the plaintiff's first count.

*Release.* — And the defendant comes and says the plaintiff executed to him a release, a copy whereof is hereto annexed, whereby he discharged the defendant from the cause of action mentioned in the second count.

#### *To a Policy of Insurance.*

*Insurance.* — And the defendants come and say that they deny, upon information and belief, that said loss was actually total, and they deny that any abandonment was made.

And the defendants come and say they deny, upon information and belief, that said vessel was seaworthy for the voyage in said policy mentioned, at the inception of said voyage.

And the defendants come, &c., (as above,) but deny, upon information and belief, that said vessel was lost while proceeding on the voyage in said policy described.

#### *Forms of Answers in Actions of Tort.*

*Trover.* — And the defendant comes and upon his personal knowledge denies that the horse mentioned in the plaintiff's writ was the property of the plaintiff, and also denies that he converted the same to his own use.

And the defendant comes and says that upon his personal knowledge he is ignorant, but upon his information and belief he denies, that the horse mentioned in the plaintiff's writ was the property of the plaintiff.

And the defendant comes and upon his knowledge and belief admits that said horse is the general property of the plaintiff, but avers that the defendant has a special property therein by reason of his having attached the same as the plaintiff's property, by virtue of a writ, (here describe it,) which writ was delivered to the defendant, who then was a deputy-sheriff in the said county of ———, for service, and the action is now pending : And so the defendant denies upon his personal knowledge that he has converted said horse to his own use.

*Deceit.* — And the defendant comes and upon his personal knowledge denies that he made said representation knowing that the same was not true.

And the defendant comes and says he has not personal knowledge, but upon his information and belief he denies that said horse was unsound, as stated in the plaintiff's declaration.

And the defendant comes and upon his personal knowledge denies that he made the representation mentioned in the plaintiff's declaration. And he says said coffee was the defendant's property, and he had a right to sell the same.

*Obstructing Way.* — And the defendant comes and says he has not personal knowledge, but, upon his information and belief he denies that the plaintiff has a right of way as set forth in his declaration.

And upon his personal knowledge he denies that he obstructed said way as set forth in said declaration.

*Slander.* — And the defendant comes and upon his personal knowledge denies that

he accused the plaintiff of the crime of perjury as set forth in the plaintiff's first *Forms of answers.* count.

And as to the second count, he says the plaintiff did feloniously steal, take, and carry away, ten dollars, the property of one S. T., in the possession of said S. T. being found, and converted the same to his own use, and so the plaintiff was guilty of the crime of theft, and the defendant's accusation was true.

*Assault and Battery.*—And the defendant comes and says the plaintiff first assaulted him, and he only defended himself.

And the defendant comes and says the plaintiff was his apprentice, and deserted and ran away from him, and he retook the plaintiff and forcibly brought him back, using no more force than was necessary.

And as to the allegation that the defendant hurt and wounded the plaintiff, the defendant upon his personal knowledge denies the same.

*Trespass quare Clausum.*—And the defendant comes and says that a part of the close mentioned in the plaintiff's writ was the soil and freehold of the defendant, the same being described as follows, &c. :

Upon his own knowledge he denies that he broke or entered any part of said close, except the part above described.

Replications.

Replications.

A. B. }  
vs. } Middlesex, Sup. Ct., October 3, 1859.  
C. D. }

*Limitations.*—And the plaintiff replies as follows, viz. : He says that within six years before the suing out of his writ the defendant executed a writing, a copy whereof is hereto annexed, by which he acknowledged said debt, and agreed to pay the same.

He further says the defendant has been absent from this commonwealth for the space of three years last past.

*Minority.*—And the plaintiff replies that he is ignorant of the fact, so that he can neither admit nor deny that the defendant was a minor, as stated in his answer, but leaves the defendant to prove the same.

He further says the articles mentioned in his bill of particulars were necessities for the defendant, and suitable to his estate and degree.

CHAPTER 130.

OF SET-OFF AND TENDER.

- SET-OFF.
- SECTION
- 1. Mutual demands, &c.
  - 2, 3, 4. Description of demands to be set off.
  - 5. Set-off of demands assigned ;
  - 6. of bonds, &c. ;
  - 7. in what actions allowed.
  - 8. Where there are several plaintiffs or defendants.
  - 9. Dormant partner.
  - 10. Assignment of demand.
  - 11. Actions by one in trust ;
  - 12. by executors or administrators.
  - 13. Form of judgment in such cases.
  - 14. Actions against executors, &c.
  - 15. Demand due in same right.

- SECTION
- 16. Declaration in set-off.
  - 17. Subsequent allegations and pleadings.
  - 18. Limitations in bar.
  - 19. Judgment when demand in set-off is equal, &c. ;
  - 20. when balance is due to defendant.
  - 21. Plaintiff not to discontinue.
  - 22. Set-off in suits before a justice of the peace, &c.

- TENDER.
- 23. Payment or tender after day, &c.
  - 24. Tender after action brought ;
  - 25. how to be made, and defence.
  - 26. Proceedings when tender is accepted.

SET-OFF.

SECTION 1. When there are mutual debts or demands between the plaintiff and defendant in an action, one demand may be set off against the other, as provided in this chapter.

13 Met. 132, 134. 10 Gray, 492. 8 Allen, 111. 5 Allen, 36. 9 Allen, 192. 108 Mass. 567.

SECT. 2. No demand shall be set off unless it is founded upon a judgment or upon a contract, but the contract may be either express or implied, and with or without a seal.

SECT. 3. No demand shall be set off unless it is for the price of real or personal estate sold, or for money paid, money had and received, or

Mutual demands, &c.  
R. S. 96, § 1.  
6 Met. 7.  
9 Met. 39, 367.  
11 Met. 136.  
Description of demands to be set off.  
R. S. 96, § 2.  
Same subject.  
R. S. 96, § 3.  
17 Mass. 66.

4 Pick. 68.  
 5 Pick. 812.  
 8 Met. 520.  
 4 Met. 430.  
 Same subject.  
 R. S. 96, § 4.  
 9 Met. 39, 367,  
 509.  
 13 Met. 182.  
 7 Gray, 170.  
 Set-off of demands  
 assigned;  
 R. S. 96, § 5.  
 11 Met. 198.  
 8 Gray, 504.  
 5 Allen, 38.  
 of bonds, &c.;  
 R. S. 96, § 6.  
 4 Met. 430.

in what actions  
 allowed;  
 R. S. 96, § 7.  
 4 Met. 430.  
 97 Mass. 502.  
 if several  
 plaintiffs or de-  
 fendants;  
 R. S. 96, § 8.  
 11 Mass. 140.  
 1 Met. 30.  
 dormant part-  
 ner;  
 R. S. 96, § 9.  
 6 Pick. 362.

assignment of  
 demand.  
 R. S. 96, § 10.  
 12 Mass. 193, 195.  
 14 Mass. 281.

Actions by one in  
 trust;  
 R. S. 96, § 11.  
 8 Pick. 342.  
 11 Met. 196.  
 7 Cush. 217.

by executors or  
 administrators.  
 R. S. 96, § 12.  
 2 Mass. 498.  
 3 Pick. 452.  
 4 Pick. 212.

Form of judg-  
 ment in such  
 cases.  
 R. S. 96, § 13.

Actions against  
 executors, &c.  
 R. S. 96, § 14.

Demand due in  
 same right.  
 R. S. 96, § 15.  
 6 Met. 537.  
 7 Gray, 170.

Declaration in  
 set-off.  
 R. S. 96, §§ 16, 17.  
 1852, 312, § 87.  
 2 Met. 411.  
 7 Gray, 184.  
 9 Allen, 192.  
 Subsequent alle-  
 gations and  
 pleadings.

for services done, or unless it is for  
 may be ascertained by calculation.

6 Met. 7. 10 Allen, 482.  
 SECT. 4. No demand shall be  
 of the commencement of the suit,  
 nor unless it is due to him in his  
 provided.

SECT. 5. Any demand assigned  
 the plaintiff of the assignment befo  
 may be set off in like manner as if  
 defendant.

SECT. 6. If the demand set off  
 tract having a penalty, no more  
 tably due.

SECT. 7. The set-off shall be a  
 demands which could themselves b  
 law, and in no others.

SECT. 8. If there are several p  
 due from all of them jointly; and  
 demand set off shall be due to all o  
 in the following section.

5 Allen, 371. 105 Mass. 215.  
 SECT. 9. When the person with  
 dormant partner, and a suit is bro  
 the partners jointly, any demand d  
 the contract was made, may be set  
 partner had not been joined in the

SECT. 10. If the demand on w  
 assigned, and the defendant had n  
 set off any demand that he acqui  
 such notice.

SECT. 11. When an action is b  
 the use or benefit of another, the  
 against the person for whose use or  
 manner as if that person were the p

SECT. 12. In actions by exec  
 against their testators or intestates  
 the time of their death, may be s  
 action had been brought by the dec

9 Pick. 37. 4 Gray, 236. 7 C  
 SECT. 13. When upon such a se  
 trator, a balance is found due to t  
 against the plaintiff shall be in the  
 as if the suit had been originally co

SECT. 14. In actions against exe  
 trustees and others, sued in their  
 ants may set off demands belongin  
 those whom they represent, in the  
 sented would have been entitled to  
 themselves.

SECT. 15. In suits brought by  
 or trustees, in their representative  
 that is due to or from such executor  
 own right.

SECT. 16. When the defendant  
 he shall file with his answer a decl  
 set-off, and adapted to the claim i  
 were brought upon it.

SECT. 17. The subsequent alleg  
 defendant's demand shall be govern

had been brought thereon; and the plaintiff shall be entitled to every ground of defence against it of which he might have availed himself by an answer or otherwise in an action brought against him.

SECT. 18. If any law for the limitation of actions is alleged by way of defence to the defendant's demand, the limitation shall be applied in the same manner as it would have been to an action brought on the same demand if it had been commenced at the time when the plaintiff's action was commenced.

SECT. 19. If an amount is proved to be due on the set-off equal to the amount due to the plaintiff, the court may award costs to either party or dismiss the action without costs; and if the amount so proved is less than the sum due to the plaintiff, he shall have judgment for the balance.

SECT. 20. If it appears that there is a balance due from the plaintiff to the defendant, judgment shall be rendered for the defendant for the amount thereof with his costs; but no such judgment shall be rendered against the plaintiff when the demand for which the action is brought was assigned before the commencement of the suit, nor for any balance due from any other person than the plaintiff.

SECT. 21. After a declaration in set-off is filed, the plaintiff shall not be allowed to discontinue his action, unless by consent of the defendant.

SECT. 22. In actions before a justice of the peace, or police court, the defendant shall file his declaration in set-off at the time when the action is entered, or within such further time as the justice or court for special reasons may allow. All the other proceedings shall be the same as are before prescribed with respect to actions in other courts: *provided*, that judgment for the defendant shall not be entered for more than one hundred dollars, or for more than three hundred dollars in the police court of Boston, exclusive of costs.

## TENDER.

SECT. 23. The payment or tender of payment of the whole sum due on any contract for the payment of money, although made after the money has become due and payable, may be alleged in an answer to an action subsequently brought, in like manner and with the like effect as if such payment or tender had been made at the time prescribed in the contract.

SECT. 24. A tender may also be made after an action is brought on such contract, of the whole sum due thereon with the legal costs of suit incurred up to that time: *provided*, it is made four days at least before the return day of the original writ.

SECT. 25. The tender last mentioned may be made either to the plaintiff or to his attorney in the suit, and if not accepted the defendant may avail himself of it in defence in like manner as if it had been made before the commencement of the action, bringing into court the amount so tendered for costs, as well as for the debt or damages.

SECT. 26. If such tender is accepted, the plaintiff or his attorney shall, at the request of the defendant, sign a certificate or notice thereof to the officer who has the writ, and deliver it to the defendant; and if any further costs are incurred for any service made by the officer after the tender and before he receives notice thereof, the defendant shall pay the same to the officer, or the tender shall be invalid.

R. S. 96, § 19.  
1862, 312, § 37. 116m 283  
2 Gray, 230.  
7 Gray, 194.  
5 Allen, 87.  
9 Allen, 192.

Limitations in bar.  
R. S. 96, § 20.  
4 Gray, 383.  
11 Allen, 101.

107m 285  
Judgment when demand in set-off is equal, &c.;  
R. S. 96, § 21.  
4 Gray, 511.

when balance is due to defendant.  
R. S. 96, § 22.  
4 Gray, 511.

Plaintiff not to discontinue. 115m 253  
R. S. 96, § 24.  
10 Cush, 313.  
Set-off in suits before a justice of the peace, &c.  
R. S. 96, § 23.  
1859, 190.

See 1870, 390, § 8.

Payment or tender after day, &c.  
R. S. 100, § 14.  
96 Mass. 528.

Tender after action brought; 108m 357  
R. S. 100, § 15.  
11 Allen, 627.

how to be made, and defence.  
R. S. 100, § 16.

Proceedings when tender is accepted.  
R. S. 100, § 17.

## CHAPTER

### OF WITNESSES

#### WITNESSES.

##### SECTION

1. Witnesses, by whom summonses for may be issued,
2. summons for, by whom served;
3. fees to be tendered to;
4. liability of, for not attending;
5. further liability of,
6. may be brought in on warrant;
7. oaths to, by arbitrators, &c.
- 8, 9. Mode of administering oaths.
- 10, 11. Who may affirm.
12. Persons other than Christians, how sworn.
13. Witnesses not excluded by crime, &c.
14. Parties in civil suits may testify, except &c.
15. Witnesses to wills.
16. When wife may testify.

#### DEPOSITIONS.

- 17, 18. Depositions, when taken, &c.
19. Notice to be given to adverse party;
20. on whom to be served;
- 21, 22. how to be served.
- 23, 24. Deponent, how sworn and examined.
25. Deposition, by whom to be written.
26. Certificate to be annexed.
27. Deposition to be transmitted to court, &c.;
28. not to be used if deponent can attend.
29. Objections to deponent or his testimony, how and when made.
30. Deposition, when may be used in another suit.
31. Courts may make rules concerning depositions.
32. Deponent may be compelled to testify;
33. living out of state, but at the time here in, may be compelled to give depositions &c.
34. Depositions, how taken out of state;
35. to be taken on written interrogatories.
36. Rules concerning foreign depositions.
37. Discretionary power as to depositions and affidavits otherwise taken.
38. Depositions may be taken for courts in other governments.

*Witnesses in process  
in other states*

*1873 & 319 - 1874. 150*

#### WIT

Witnesses, how  
summoned;  
1784, 28.  
R. S. 86, § 88.  
R. S. 94, § 1.  
R. S. 96, § 28.  
See 1868, 157, § 8.  
1868, 158.

summons for,  
by whom served;  
R. S. 94, § 2.

fees to be ten-  
dered to;  
R. S. 94, § 8.  
4 Cush. 249.  
99 Mass. 177.

liability of,

SECTION 1. Every clerk of a court of the peace, may issue summonses before any court, magistrates, or persons authorized to examine witnesses in the form heretofore adopted and from time to time like other writs.

SECT. 2. Such summons may be served by a civil process or by a disreturn, by reading it to the witness, or by leaving such copy at the place of his abode.

SECT. 3. No person shall be obliged to pay the fees allowed by law for one day and returning from the place where he is tendered to him.

SECT. 4. If a person duly summoned

ness, fails so to do without a reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in an action of tort.

SECT. 5. Such failure to attend as a witness before any court, justice of the peace, master in chancery, or the county commissioners, or before an auditor appointed by the supreme judicial or superior court, shall also be considered a contempt of the court, and may be punished by a fine not exceeding twenty dollars.

SECT. 6. The court, justice, master in chancery, county commissioners, or auditor, in such case, may issue a warrant to bring such witness before them to answer for the contempt, and also to testify as a witness in the cause in which he was summoned. 12 Cush. 822. 1858, 98, §§ 2, 3.

SECT. 7. Arbitrators, referees, and auditors, appointed according to law, may administer oaths or affirmations to all persons offered as witnesses before them.

SECT. 8. The usual mode of administering oaths now practised in this state, with the ceremony of holding up the hand, shall be observed in all cases in which an oath may be administered by law, except as is hereinafter provided.

SECT. 9. When the court or magistrate before whom a person is to be sworn, is satisfied that such person has any peculiar mode of swearing which is in his opinion more solemn or obligatory than holding up the hand, they may adopt that mode of administering the oath.

SECT. 10. Every Quaker when called on to take an oath shall be permitted, instead of swearing, solemnly and sincerely to affirm under the pains and penalties of perjury.

SECT. 11. Every person who declares that he has conscientious scruples against taking any oath, shall, when called upon for that purpose, be permitted to affirm in the manner prescribed for Quakers, if the court or magistrate on inquiry is satisfied of the truth of such declaration.

SECT. 12. Every person believing in any other than the Christian religion, may be sworn according to the peculiar ceremonies of his religion, if there are any such. Every person not a believer in any religion shall be required to testify truly under the pains and penalties of perjury; and the evidence of such person's disbelief in the existence of God may be received to affect his credibility as a witness.

SECT. 13. (R.) [No person shall be excluded by reason of crime or interest from giving evidence as a witness either in person or by deposition in any proceeding civil or criminal in court or before a person having authority to receive evidence. But the conviction of any crime may be shown to affect the credibility of a witness.]

(R.) Repeal and substitute. 1870, 398.

SECT. 14. (R.) [Parties in civil actions and proceedings, including probate and insolvency proceedings, suits in equity, and divorce suits, (except those in which a divorce is sought on the ground of alleged adultery of either party,) shall be admitted as competent witnesses for themselves or any other party; and in any such case in which the wife is a party or one of the parties, she and her husband shall be competent witnesses for and against each other, but they shall not be allowed to testify as to private conversations with each other: *provided*, that where one of the original parties to the contract or cause of action in issue and on trial is dead, or is shown to the court to be insane, the other party shall not be admitted to testify in his own favor; and where an executor or administrator is a party, the other party shall not be admitted to testify in his own favor, unless the contract in issue was originally made with a person who is living and competent to testify, except as to such acts and contracts as have been done or made since the probate of the will, or the appointment of the administrator.]

for not attending.  
R. S. 94, § 4.  
4 Cush. 249.

Witnesses, further liability of;  
R. S. 94, § 5.  
1838, 42.  
1856, 284, § 9.  
1858, 98, §§ 2, 3.

may be brought  
in on warrant;  
R. S. 94, § 6.  
1838, 42.  
1856, 284, § 9.

oaths to, by  
arbitrators, &c.  
1852, 64.

Mode of administering oaths.  
R. S. 94, § 7.  
11 Allen, 243.  
See 1859, 426.

Same subject.  
R. S. 94, § 8.  
6 Mass. 262.  
16 Pick. 158.

Who may affirm.  
R. S. 94, § 9.

Same subject.  
R. S. 94, § 10.  
2 Gallis, 364.  
3 Met. 254.

Persons other than Christians, how sworn, &c.  
R. S. 94, § 11.  
16 Gray, 33.

Witnesses not excluded by crime, &c.  
1852, 312, § 60.  
17 Mass. 537, 549.  
9 Pick. 512.  
5 Met. 335.

Parties in civil suits may testify, except, &c.  
1851, 256, § 3.  
1857, 305, § 1.  
1859, 230, § 2.  
5 Gray, 440.  
7 Gray, 82.

(R.) Repeal and substitute.  
1870, 398.

Witnesses to  
wills.  
(R.) *Repeal*.  
1870, 838.

When wife may  
testify.  
1869, 280, § 1.  
(R.) *Repeal and*  
*substitute*.  
1870, 838.

Depositions,  
when taken, &c.  
R. S. 94, § 13.

Same subject.  
R. S. 94, § 14.  
13 Gray, 11.  
14 Gray, 130.

Notice to be given  
to adverse party;  
R. S. 94, § 15.  
13 Allen, 83.  
106 Mass. 383.

on whom to be  
served;  
R. S. 94, §§ 16, 17.  
7 Pick. 137.

how to be  
served;  
R. S. 94, § 18.  
7 Met. 280.  
11 Met. 78.  
1 Allen, 343.

same subject.  
R. S. 94, § 19.

Deponent, how  
sworn and ex-  
amined.  
R. S. 94, § 20.  
1 Allen, 116, 478.  
8 Allen, 146.  
108 Mass. 42.

Same subject.  
R. S. 94, § 21.

Deposition, by  
whom to be  
written.  
R. S. 94, § 22.  
12 Cush. 132.  
8 Allen, 353.

Certificate to be  
annexed.  
R. S. 94, § 23.  
8 Pick. 79, 80.  
1 Allen, 109.  
106 Mass. 100.

Deposition to be  
transmitted to  
court, &c.  
R. S. 94, § 24.  
8 Gray, 334.  
1 Allen, 478.

SECT. 15. (R.) [The provisi  
not apply to the attesting witne

SECT. 16. (R.) [In actions b  
cause of action grows out of a  
or his neglect to furnish her wit  
shall be a competent witness.]

DE

SECT. 17. Depositions may b  
be used before magistrates or o  
nesses in any other than crimina

SECT. 18. When a witness  
cause or proceeding pending in  
from the place of trial, or is al  
return in time for the trial, or i  
probable that he will not be ab  
may be taken as hereinafter pro

SECT. 19. At any time after  
of process, or after it is submitt  
may apply to a justice of the p  
verse party to appear before said justice or any other justice of the peace,  
at the time and place appointed for taking the deposition, and to put such  
interrogatories as he thinks fit.

SECT. 20. The notice may be served on the adverse party or his  
agent or attorney; and when there are several plaintiffs, defendants,  
or parties, on either side, a notice served on either of them shall be  
sufficient.

SECT. 21. The notice shall be served by delivering an attested  
copy thereof to the person to be notified, or by leaving such copy at his  
place of abode, not less than twenty-four hours before the time ap-  
pointed for taking the deposition, and also allowing time for his travel  
to the place appointed, not less than at the rate of one day, Sundays  
excluded, for every twenty miles' travel.

SECT. 22. Instead of the written notice before prescribed, the notice  
may be given verbally by the justice taking the deposition, or it may be  
wholly omitted if the adverse party or his attorney in writing waives  
the right to it.

SECT. 23. The deponent shall be sworn or affirmed to testify the  
truth, the whole truth, and nothing but the truth, relating to the cause  
for which the deposition is taken. He shall then be examined by the  
justice and the parties if they think fit, and his testimony shall be taken  
in writing.

SECT. 24. The party producing the deponent shall be allowed first  
to examine him, either upon verbal or written interrogatories, on all the  
points which he deems material; the adverse party may then examine him  
in like manner; after which either party may propose such further inter-  
rogatories as the case may require.

SECT. 25. The deposition sh  
deponent, or by some disinteres  
direction of the justice, and it  
ponent, and shall then be subsc

SECT. 26. The justice shall  
the time and manner of takin  
cause or suit for which, it was  
stating also whether the adver  
notice, if any, that was given t

SECT. 27. The deposition s  
court, arbitrators, referees, or o  
pending, or shall be enclosed a  
and shall remain sealed until o]



SECT. 28. No such deposition shall be used if it appears that the reason for taking it no longer exists; except that if the party producing it in such case shows any sufficient cause then existing for using the deposition, it may be admitted.

Deposition, when not to be used.  
R. S. 94, § 26.

6 Cush. 394

SECT. 29. Every objection to the competency or credibility of the deponent, and to the propriety of any questions put to him, or of any answers made by him, may be made when the deposition is produced in the same manner as if the witness were personally examined on the trial: *provided*, that when a deposition is taken upon written interrogatories, all objections to any interrogatory shall be made before it is answered, and if the interrogatory is not withdrawn the objection shall be noted thereon, otherwise the objection shall not be afterwards allowed.

Objections to deponent or his testimony, how and when made.  
R. S. 94, § 26.  
1 Pick. 313.  
2 Pick. 165.  
8 Pick. 61.  
6 Met. 270.  
7 Gray, 41.  
10 Gray, 380.  
8 Allen, 577.  
108 Mass. 42.

SECT. 30. When the plaintiff in a suit discontinues it or becomes nonsuit, and another suit is afterwards commenced for the same cause between the same parties or their respective representatives, all depositions lawfully taken for the first suit, may be used in the second in the same manner and subject to the same conditions and objections as if originally taken for the second suit, if the deposition was duly filed in the court where the first suit is pending, and has remained in the custody of the court from the termination of the first suit until the commencement of the second.

Deposition, when may be used in another suit.  
R. S. 94, § 27.  
22 Pick. 309.

SECT. 31. The courts may from time to time make proper and convenient rules as to the time and manner of opening, filing, and safe keeping of depositions, and other regulations concerning the taking and using thereof, which are not inconsistent with the provisions of law.

Courts may make rules concerning depositions.  
R. S. 94, § 28.

SECT. 32. A witness may be summoned and compelled to give his deposition at any place within twenty miles of his place of abode, in like manner and under the same penalties as he may be summoned and compelled to attend as a witness before a court.

Deponent may be compelled to testify.  
R. S. 94, § 29.

SECT. 33. A witness not having his place of abode in this state, but being at the time herein, may be summoned and compelled to give his deposition at any place within ten miles of the place at which the summons is served upon him, in like manner and under the same penalties as he may be summoned and compelled to attend as a witness before a court.

Witness living out of state, but at the time herein, to give deposition, &c.  
1837, 286.

SECT. 34. The deposition of a witness without this state may be taken under a commission issued to one or more competent persons in any other state or country, by the court in which the cause is pending; or it may be taken before a commissioner appointed by the governor for that purpose in any part of the United States or in any foreign country; and in either case the deposition may be used in the same manner and subject to the same conditions and objections as if it had been taken in this state.

Depositions, how taken out of state;  
R. S. 94, § 30.  
1856, 258.  
6 Met. 270.  
7 Gray, 419.  
See Ch. 14,  
§§ 41-47.  
9 Gray, 370.  
11 Allen, 670.  
108 Mass. 41.

See 1863, 41.

1864, 262.

12 Gray 6

SECT. 35. Every deposition taken before commissioners shall be taken upon written interrogatories, to be exhibited to the adverse party or his attorney, and cross-interrogatories to be filed by him if he thinks fit.

to be taken on written interrogatories.  
R. S. 94, § 31.

SECT. 36. The courts may make rules not inconsistent with the provisions of law as to the issuing of commissions, either in vacation or term time, the filing of interrogatories and all other matters relating to depositions taken out of the state.

Rules concerning foreign depositions.  
R. S. 94, § 32.

SECT. 37. Depositions and affidavits taken out of the state in any other manner than is prescribed in the three preceding sections, if taken before a notary public or other person authorized by the laws of any other state or country to take depositions, may be admitted or rejected at the discretion of the court: *provided*, that no such deposition or affidavit shall be admitted unless it appears that the adverse party had sufficient notice of the taking thereof, and opportunity to cross-examine

Discretionary power as to depositions and affidavits otherwise taken.  
R. S. 94, § 33.  
1 Cush. 449.  
9 Gray, 370.  
12 Gray, 26.  
5 Allen, 320.  
8 Allen, 391.

the witness, or that from the circumstances of the case it was impossible to give him such notice.

Depositions may be taken for courts in other governments.  
R. S. 94, § 53.  
11 Allen, 243.

SECT. 38. A witness may be summoned and compelled in like manner and under the same penalties as are prescribed in this chapter, to give his deposition in a cause pending in a court in any other state or government; which deposition may be taken before a justice of the peace in this state, or before commissioners appointed under the authority of the state or government in which the suit is pending; and if the deposition is taken before such commissioner, he may be compelled to appear before him in this state.

1874, 297 DEPOSITION

Depositions to perpetuate evidence, how taken.  
R. S. 94, § 84.  
1868, 33.  
5 Met. 178.

SECT. 39. When a person is a witness, he shall make a deposition substantially his title, claim, or interest, which he desires to perpetuate, before two persons interested or sworn, and the name of the witness present, and the statement to two justices of the peace, judge or register of probate, or judicial court, a master of the court, or them to take the deposition.

Notice to be given to all persons interested.  
R. S. 94, § 85.  
1889, 140, § 2.

SECT. 40. The justice of the peace, judge or register of probate, or judicial court, or master of the court, or them to take the deposition, shall be given in the manner prescribed for taking a deposition in this chapter, when in the opinion of the justice of the peace, judge or register of probate, or judicial court, or master of the court, or them to take the deposition, such reasonable notice to the witness.

Depositions to perpetuate testimony not to be taken when objections are made, except, &c.;  
1889, 140, § 1.

SECT. 41. If at the time the witness or any party objects, the deposition shall not proceed, unless it is made satisfactorily to the justice of the peace, judge or register of probate, or judicial court, or master of the court, or them to take the deposition, that it is made satisfactorily to the petitioner, and is not using the same in any way against said witness; and the deposition may be taken before it can be taken, or claim, can be tried. It shall at the request of the petitioner, be examined and sworn to by the same.

mode of taking.  
Certificate to be annexed;  
R. S. 94, § 86.  
3 Pick. 80  
5 Met. 172.

SECT. 42. The deposition shall be written, and the certificate prescribed respecting other matters shall annex thereto, and the manner of taking it, and the thing; and they shall be taken by the person at whose request the deposition is taken, and of all who are present, and of all who are to attend, and of all who are to be examined and sworn to by the same.

to be recorded in registry of deeds;  
R. S. 94, § 87.

SECT. 43. The deposition shall be taken at any time after the taking the deposition, in the county or district where the deposition is taken, or otherwise in the county or district where they reside.

in what cases, used.

SECT. 44. If a suit, or any time afterwards, is pending, the deposition may be taken at any time afterwards, is pending.

was taken, and the persons named in said written statement, or any of them who were notified as aforesaid, or any persons claiming under either of said parties, concerning the title, claim, or interest, set forth in the statement, the deposition so taken, or a certified copy of it from the registry of deeds, may be used in such suit in the same manner and subject to the same conditions and objections as if it had been originally taken therefor.

R. S. 94, § 38.  
3 Pick. 74.

SECT. 45. Any witness may be summoned and compelled to give his deposition in perpetual remembrance of the thing as before prescribed, in like manner and under the same penalties as are provided in this chapter respecting other depositions taken in this state.

Deponent may be summoned and compelled to testify.  
R. S. 94, § 39.

SECT. 46. Depositions to perpetuate the testimony of witnesses living without the state, may be taken in any other state, or in any foreign country, upon a commission to be issued by the supreme judicial or superior court, in the manner hereinafter provided.

Depositions may be taken out of state.  
R. S. 94, § 40.  
3 Pick. 14.

SECT. 47. The person who proposes to take the deposition shall apply to either of said courts, and file therein a statement like that before prescribed to be delivered to the justices of the peace upon taking such a deposition within this state; and if the subject of the proposed deposition relates to real estate within this state, the statement shall be filed in the county where the land or any part thereof lies, otherwise in the county where the parties or some of them reside.

Statement to be filed by party applying.  
R. S. 94, § 41.

SECT. 48. The court shall order notice of such application and statement to be served on all the persons mentioned therein as adversely interested in the case, and living within the state, which notice shall be served fourteen days at least before the time therein appointed for hearing the parties.

Notice to be given to adverse party.  
R. S. 94, § 42.

SECT. 49. If, upon hearing the parties who appear, the court is satisfied that there is sufficient cause for taking the deposition, it shall issue a commission therefor in like manner as for taking a deposition to be used in any cause pending in the same court.

Commission may be issued.  
R. S. 94, § 43.

SECT. 50. The deposition shall be taken upon written interrogatories filed by the applicant, and cross-interrogatories filed by any party adversely interested, if he thinks fit, and it shall be taken and returned substantially in the same manner as if taken to be used in a cause pending in the same court.

Deposition, how taken and returned.  
R. S. 94, § 44.

SECT. 51. The person who proposes to take the deposition may, at his election, file his statement in the clerk's office in vacation, and may cause notice thereof to be given to the persons therein named as adversely interested, by serving them with an attested copy of the statement, fourteen days at least before the next term of the court; and the court may thereupon proceed to hear the parties and to issue the commission as before provided.

Statement may be filed and notice given in vacation.  
R. S. 94, § 45.

SECT. 52. The supreme judicial court may from time to time make rules not inconsistent with the provisions of law as to taking depositions to perpetuate the testimony of witnesses without the state, whether taken under a commission from the supreme judicial or superior court, and as to the filing or recording of such depositions.

S. J. C. may make rules concerning such depositions.  
R. S. 94, § 46.  
1859, 196.

SECT. 53. All depositions to perpetuate the testimony of witnesses, taken at any place without this state according to the provisions of this chapter, may be used in like manner as if taken within the state.

Such depositions when to be used.  
R. S. 94, § 47.

SECT. 54. Depositions to perpetuate the testimony of witnesses within or without the state, so that the same may be evidence against all persons, may be taken upon a commission to be issued after public notice by the supreme judicial or superior court.

Depositions to perpetuate testimony against all persons.  
R. S. 94, § 48.

SECT. 55. The person who desires to have such deposition taken may apply to either of said courts in the manner before prescribed in the case of taking a deposition to perpetuate the testimony of a witness living without the state, and all the proceedings thereon shall be the same as are prescribed in the case last mentioned.

Proceedings therefor.  
R. S. 94, § 49.

Depositions to  
perpetuate testi-  
mony against all  
persons.  
Proceedings  
therefor  
R. S. 94, § 50.

SECT. 56. The court shall, in addition to the proceedings before prescribed, inquire upon the oath of the applicant or otherwise, at its discretion, as to all persons known or supposed to be interested in the case, and shall in the commission direct the commissioner or commissioners to publish in such newspaper or newspapers within or without the state, or both, or in such other manner as the court considers most effectual, such notice of the time and place of taking such deposition, and of the subject matter thereof, as the court thinks proper; which notice shall be addressed specially by name to all persons who are known or supposed to be interested in the case, and generally to all others, that they may attend and propose cross-interrogatories to the witness. The court may also require personal notice of the time and place of taking, and of the subject matter of, such deposition, to be given to such persons and in such manner as under all the circumstances seems proper.

Such depositions  
to be recorded in  
registry of deeds;  
R. S. 94, § 51.

SECT. 57. Such deposition having been taken and returned to the court by whose order the commission issued, and being found to have been taken according to law and the directions contained in the commission, the court shall order it to be recorded within thirty days in the registry of deeds, in the manner prescribed in section forty-three.

In what cases  
they may be  
used.  
R. S. 94, § 52.

SECT. 58. A deposition taken and recorded under the provisions of the four preceding sections, or a certified copy thereof from the registry, may be used by the person at whose request it was taken, or by any person claiming under him, against any person whatever, in any suit or process, wherein is brought in question the title, claim, or interest, set forth in the statement upon which the commission was founded, in the same manner, and subject to the same conditions and objections, as if it had been originally taken for said suit or process.

#### DEPOSITIONS OF PARTIES.

Depositions of  
parties, &c.  
1857, 306, § 2.  
6 Gray, 440.

SECT. 59. The testimony of persons made competent witnesses by section fourteen, may be taken or given by depositions, for the causes and in the manner provided for other witnesses, and the expenses of such depositions shall be taxed in the bill of costs as in other cases.

#### EVIDENCE IN PROCEEDINGS IN EQUITY.

Evidence in  
equity.  
1852, 312, § 85.  
12 Cush. 601.  
13 Allen, 23.  
106 Mass. 255.

SECT. 60. In proceedings in the same manner as in suits at law, otherwise directs; but this shall they have heretofore been allowed.

#### PROOF OF STATUTES AND LAWS.

Records of courts  
of other states,  
how authenti-  
cated.  
R. S. 94, § 57.  
9 Cranch, 122.  
5 Met. 436.

SECT. 61. The records and judgments of any other state or of the United States, in all cases in this state, when authenticated by the clerk, prothonotary, or other officer of such court, with the seal of such court,

See U. S. const. art. 4, § 1.

12 Allen.

Acts and resolves  
published by law  
to be evidence.  
R. S. 94, § 58.  
8 Gray, 160.

SECT. 62. The printed copies of the laws of the commonwealth, whether of the state or under the authority of the governor, shall be evidence thereof in all courts and in all cases.

Laws of other  
states, when evi-  
dence.  
R. S. 94, § 59.  
8 Pick. 238.  
4 Allen, 504.  
10 Allen, 337, 435.

SECT. 63. Printed copies of the laws of the United States, or of the laws of any state, published under the authority of the Congress, shall be admitted and read as evidence in all cases.

in all courts of law, and on all other occasions, in this state, as prima facie evidence of such laws.

SECT. 64. The unwritten or common law of any other of the United States, or of the territories thereof, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts may also be admitted as evidence of such law. 7 Allen, 396. 99 Mass. 254.

SECT. 65. The existence, tenor, or effect, of all foreign laws, may be proved as facts, by parol evidence; but if it appears that the law in question is contained in a written statute or code, the court may in its discretion reject any evidence of such law that is not accompanied by a copy thereof.

Unwritten laws of other states, how proved.  
R. S. 94, § 60.  
12 Gray, 244.  
13 Gray, 601.  
Laws of foreign countries, how proved.  
R. S. 94, § 61.  
14 Mass. 466.

## CHAPTER 132.

### OF JURIES.

#### QUALIFICATION AND EXEMPTION.

##### SECTION

1. Qualification of jurors.
2. Persons absolutely exempt.
3. To serve but once in three years;
4. except, &c.
6. Jurors before justices of peace and police courts, when exempt, &c.

#### JURY LIST AND BOX.

6. Selectmen to prepare lists of persons qualified.
7. List to be posted up and approved or altered by town.
8. Names to be put into a box.
9. Name of person convicted, &c., to be withdrawn.

#### VENIRES FOR JURORS.

10. Clerks to issue writs of *venire facias*.
11. Jurors to be apportioned.
12. *Venires*, how served.
13. Additional *venires* may be issued in term time. How served.
14. Special provisions for Dukes County.

#### DRAWING AND SUMMONING JURORS.

15. Jurors selected by drawing names.
16. Names, when and how to be drawn.
17. Date of each draft to be indorsed on ballot.
18. May be drawn in town meeting.
19. Meetings for drawing jurors, when held.
20. Summoning jurors and returning *venire*.

#### SPECIAL PROVISIONS FOR CITIES.

##### SECTION

21. Lists, how made, &c., in cities.
22. Drawing jurors, &c., in cities.

#### EMPAÑELLING AND OTHER PROVISIONS RESPECTING JURORS.

23. Empañelling juries for civil causes;
24. supernumeraries, &c.;
25. foreman to be chosen by jury.
26. Empañelling juries in criminal cases.
27. Talesmen, when and how returned;
28. who and by whom returned.
29. Jurors may be examined, &c., as to interest, &c.
30. When interest not to disqualify.
31. Objections to jurors, when to be made.
32. Certain irregularities not material.
33. Gratuities, &c., to jurors forbidden.
34. Jury not to be sent out more than twice, unless, &c.
35. Court may direct a view by jury.

#### PENALTIES.

36. Fines on jurors neglecting to attend;
37. on officers and others for neglect.
38. Same, in cases of highways, mills, &c.
39. Punishment for fraud in drawing jurors.

#### EXCEPTIONS OF SPECIAL JURIES.

40. Special juries not affected by this chapter.

#### QUALIFICATION AND EXEMPTION.

SECTION 1. All persons who are qualified to vote in the choice of representatives in the general court shall be liable to be drawn and serve as jurors, except as is hereinafter provided.

SECT. 2. The following persons shall be exempt from serving as jurors, to wit:—

The governor, lieutenant-governor, members of the council, secretary of the commonwealth, members and officers of the senate and house of representatives during the session of the general court, judges and justices of any court, (except justices of the peace,) county and special commissioners, clerks of courts, registers of probate and insolvency, registers of deeds, sheriffs and their deputies, coroners, constables, mar-

Qualifications of jurors.  
R. S. 96, § 1.  
9 Mass. 107.

Persons absolutely exempt.  
R. S. 18, § 17.  
R. S. 96, §§ 2, 3.  
1838, 21.  
1849, 218, § 2.  
1851, 204.  
1858, 98.  
19 Pick. 388.  
See 1864, 216.

shals of the United States and the United States, counsellors and at the gospel, officers of colleges, prece academies, practising physicians and of incorporated banks, constant for sixty-five years old, members of the ancient and honorable artiller members of the fire department o men and members of the fire depart ment by the vote of the city council the town.

To serve but once  
in three years,  
R. S. 95, § 12.  
16 Mass. 220.  
8 Pick. 504.

except, &c.  
R. S. 95, § 38.

Jurors before  
justices of peace  
and police courts,  
when exempt,  
&c.  
1862, 314,  
§§ 2, 10.

SECT. 3. No person shall be liable in any court oftener than once in the two following sections, but he shall attend and serves as a juror in purs

SECT. 4. The inhabitants of the County shall be liable to be drawn two years.

SECT. 5. No person shall be exempt from other court, in consequence of his holding office in a justice of the peace or police court. No person shall be exempt from serving as a juror before any justice of the peace, or for more than five days in any one year, nor more than once except to finish a case commenced v

#### JURY LIST

Selectmen to pre-  
pare lists of per-  
sons qualified.  
R. S. 95, §§ 4, 28.  
1856, 125, § 1.  
7 Met. 323.

List to be posted  
up and approved  
or altered by  
town  
R. S. 95, § 5.  
1856, 125, §§ 1, 2.  
7 Met. 323.

Names to be put  
into a box.  
R. S. 95, § 6.

Name of person  
convicted, &c.,  
to be withdrawn.  
R. S. 95, § 7.

SECT. 6. The selectmen of each town shall prepare a list of such inhabitants of the town as they think well qualified to serve as jurors, of sound judgment, and of good character, and the list shall include not less than one for every thirty inhabitants of the town, and not more than one for every thirty inhabitants by the then last census, except that the list may include one for every thirty inhabitants.

SECT. 7. The list when so prepared shall be posted up in public places in the town, ten days for revision and acceptance, and shall be subject to be altered by the town may alter it by adding to or striking from the list any names therefrom.

SECT. 8. The selectmen shall cause the names to be written, each on a separate paper, and the ballots so as to resemble each other, and the name written thereon shall not be less than one inch square. The selectmen shall place the ballots in a box to be used for the purpose.

SECT. 9. If any person whose name is on the list is convicted of any scandalous crime, or is otherwise disqualified, his name shall be withdrawn therefrom, and shall not be returned to serve as a juror.

#### VENIRES FOR

Clerks to issue  
writs of venire  
facias.  
R. S. 86, § 7.  
R. S. 95, §§ 13,  
17.  
1856, 196.  
See Ch. 171,  
§§ 1, 2, 3.

SECT. 10. The clerks of the superior court shall issue writs of venire facias, at the due season before each term, (except the county of Suffolk for criminal trials) and shall thereupon require the

City of  
Boston  
1876-207

day of the term as the court may order. The jurors returned for the superior court for criminal business in the county of Suffolk shall serve three terms.

1873 & 4

SECT. 11. The clerks in issuing the *venires* shall require from each town and city a number of jurors as nearly as may be in proportion to their respective number of inhabitants, so as to equalize as far as possible the duty of serving as jurors.

Jurors to be apportioned.  
R. S. 96, § 14.

SECT. 12. The *venires* shall be delivered to the sheriff of the county, and by him transmitted to a constable in each of the towns and cities to which they are respectively issued, and they shall be served by the constable, without delay, on the selectmen and town clerk.

*Venires*, how served.  
R. S. 96, § 15.

SECT. 13. Nothing contained in the preceding sections shall prevent any court from issuing *venires* for additional jurors in term time whenever it is necessary for the convenient despatch of their business; in which case the *venires* shall be served and returned, and the jurors required to attend on such days, as the court shall direct.

Additional *venires* may be issued in term time.  
R. S. 96, § 18.

SECT. 14. When a suit is pending in the superior court for the county of Dukes County, wherein the inhabitants of any town in said county are disqualified from acting as jurors, any justice of the court, in term time or in vacation, may order the clerk of the court to issue writs of *venire facias* for a sufficient number of jurors to try such cause, from any town whose inhabitants are not so disqualified; and the clerk shall issue a *venire facias* accordingly.

Special provisions for Dukes County.  
1852, 75.  
1859, 198.

#### DRAWING AND SUMMONING JURORS.

SECT. 15. All jurors, whether required to serve on a grand or traverse jury, by force of the laws relating to highways or mills, or on any other occasion, (except inquests and proceedings relating to the commitment of insane persons,) shall be selected by drawing ballots from the jury box, and the persons whose names are borne on the ballots so drawn shall be returned to serve as jurors.

Jurors selected by drawing names.  
R. S. 96, § 8.  
1837, 228.  
1838, 73.  
1839, 149.  
1864, 424.

SECT. 16. When jurors are to be so drawn, the town clerk and selectmen shall attend at the clerk's office or some other public place appointed for the purpose, and if the clerk is absent, the selectmen may proceed without him. The ballots in the jury box shall be shaken and mixed together, and one of the selectmen without seeing the names written thereon shall openly draw therefrom a number of ballots equal to the number of jurors required. If a person so drawn is exempt by law, or is unable by reason of sickness or absence from home to attend as a juror, or if he has served as a juror in any court within three years then next preceding, his name shall be returned into the box and another drawn in his stead.

Names, when and how to be drawn.  
R. S. 96, § 9.

SECT. 17. When a person is drawn and returned to serve as a juror in any court, the selectmen shall indorse on the ballot the date of the draft and return it into the box, and whenever there is a revision and renewal of the ballots in the box, the selectmen shall transfer to the new ballots the date of all the drafts made within three years then next preceding.

Date of each draft to be indorsed on ballot.  
R. S. 96, § 11.

SECT. 18. Any town may at a legal meeting order that all drafts for jurors therein shall be made in open town meeting, in which case the draft shall be made by the selectmen in the manner prescribed in the two preceding sections, except that it shall be done in a town meeting. In such town when a *venire* is served upon the selectmen they shall cause a town meeting to be notified and warned for that purpose in the manner ordered by the town or otherwise prescribed by law.

May be drawn in town meeting.  
R. S. 96, §§ 10, 15.

SECT. 19. The meeting for drawing jurors, whether the draft is made in town meeting or before the selectmen and town clerk only, shall be

Meetings for drawing jurors, when held.  
R. S. 96, § 16.

held not less than seven nor more than twenty-one days, before the day when the jurors are required to attend.

Summoning jurors and returning venire.  
R. S. 96, § 17.  
18 Met. 325.

SECT. 20. The constable shall, four days at least before the time when the jurors are required to attend, summon each person who is drawn, by reading to him the *venire* with the indorsement thereon of his having been drawn, or by leaving at his place of abode a written notification of his having been drawn and of the time and place of the sitting of the court at which he is to attend, with his doings thereon to the from which it was issued.

#### SPECIAL PROV

Lists, how made, &c. in cities.  
1866, 125, §§ 1, 2.

SECT. 21. The list of jurors therein by the mayor and aldermen, and when posted for ten days in council, which shall have like power as the same.

Drawing jurors, &c. in cities.  
R. S. 96, § 35.  
1866, 125, §§ 1, 2.

SECT. 22. The mayor and aldermen severally have and exercise all the powers and all other matters required to be performed in their respective towns, and all cities shall be served on the mayor.

#### EMPANELLING AND OTHER

[See 1862, 84; 1869, 151; 1871,

Challenge 1873: 317  
1875-167

Empanelling jurors for civil cases;  
R. S. 96, §§ 20, 21.

SECT. 23. On the day when the court is to sit, the clerk shall prepare a list of the names of the jurors in alphabetical order. The first twelve names shall be sworn and empanelled as a jury for the first trial. The next twelve names shall be sworn and empanelled in like manner, and so on.

Supernumerary jurors, &c.;  
R. S. 96, § 21.

SECT. 24. Supernumerary jurors may be put on until wanted, and may be put on in the place of absentees. Nothing shall be done with the transferring of jurors from one jury to another, or of the jurors required for the court or of the jurors required for the court.

Foreman to be chosen by jury.  
R. S. 96, § 22.

SECT. 25. Each jury after being sworn shall choose their foreman by ballot, or by the first cause with which the foreman is absent or excused from the court, or by the first cause with which the foreman is absent or excused from the court.

187

Empanelling jurors in criminal cases.  
R. S. 96, § 23.  
6 Met. 225, 226.  
See Ch. 172.

SECT. 26. Nothing contained in this chapter shall be construed to the empanelling of juries in criminal cases, or to the empanelling of juries in criminal cases, or to the empanelling of juries in criminal cases.

Talotmen, when and how returned;  
R. S. 96, § 24.

SECT. 27. When by reason of the number of jurors duly drawn and returned from the bystanders, or from the panel: *provided*, that there be a sufficient number of jurors who were originally drawn for the trial of any cause, civil or criminal, the court may order the jurors so returned to be returned by the sheriff or his deputy.

who and by whom returned.  
R. S. 96, §§ 25, 26.  
6 Cush. 174.

SECT. 28. The jurors so returned by the sheriff or his deputy shall be qualified and liable to be drawn for the trial of any cause, civil or criminal, as if they had been originally drawn for the trial of any cause, civil or criminal, as if they had been originally drawn for the trial of any cause, civil or criminal.



SECT. 29. The court shall, on motion of either party in a suit, examine on oath any person who is called as a juror therein, to know whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror does not stand indifferent in the cause, another shall be called and placed in his stead for the trial of that cause.

Jurors may be examined, &c. as to interest, &c.  
R. S. 96, § 27.  
18 Pick. 153.  
13 Met. 120.  
5 Cush. 226.  
11 Gray, 56.

SECT. 30. In indictments and penal actions for the recovery of any sum of money or other thing forfeited, it shall not be a cause of challenge to a juror that he is liable to pay taxes in any county, city, or town which may be benefited by such recovery. See Ch. 122, § 13. 2 Allen, 408.

When interest not to disqualify.  
R. S. 96, § 28.  
5 Mass. 30.  
9 Met. 576.  
1 Gray, 472.

SECT. 31. If a party knows of any objection to a juror in season to propose it before the trial, and omits to do so, he shall not afterwards be allowed to make the same objection, unless by leave of the court.

Objections when made.  
R. S. 96, § 29.  
1 Pick. 38, 196.  
21 Pick. 471.

2 Gray, 231.

SECT. 32. No irregularity in any writ of *venire facias*, or in the drawing, summoning, returning, or empanelling of jurors, shall be sufficient to set aside a verdict, unless the party making the objection was injured by the irregularity, or unless the objection was made before the returning of the verdict.

Certain irregularities not material.  
R. S. 96, § 30.  
1 Pick. 38, 196.  
2 Pick. 550.  
9 Met. 572.

SECT. 33. If either party in a case in which a verdict is returned, during the same term of the court, either before or after the trial, gives to any of the jurors who try the cause any thing by way of treat or gratuity, the court may, on the motion of the adverse party, set aside the verdict and award a new trial of the cause.

Gratuities to jurors forbidden.  
R. S. 96, § 31.  
2 Allen, 557.

SECT. 34. When a jury, after due and thorough deliberation upon any cause, return into court without having agreed on a verdict, the court may state anew the evidence or any part of it, and explain to them anew the law applicable to the case, and may send them out for further deliberation; but if they return a second time without having agreed on a verdict, they shall not be sent out again without their own consent, unless they shall ask from the court some further explanation of the law.

Jury not to be sent out more than twice, unless, &c.  
R. S. 96, § 32.  
13 Allen, 411.

SECT. 35. The jury in any case may, at the request of either party, be taken to view the premises or place in question, or any property, matter, or thing relating to the controversy between the parties, when it appears to the court that such view is necessary to a just decision: *provided*, the party making the motion advances a sum sufficient to defray the expenses of the jury and the officers who attend them, in taking the view; which expenses shall be afterwards taxed like other legal costs, if the party who advanced them prevails in the suit.

Court may direct a view by jury.  
R. S. 96, § 33.

#### PENALTIES.

SECT. 36. If a person duly drawn and summoned to attend as a juror in any court neglects to attend without sufficient excuse, he shall pay a fine not exceeding forty dollars, which shall be imposed by the court to which the juror was summoned, and shall be paid into the county treasury.

Fines on jurors neglecting to attend.  
R. S. 96, § 19.

SECT. 37. When, by neglect of any of the duties required in this chapter to be performed by any of the officers or persons herein mentioned, the jurors to be returned from any place are not duly drawn and summoned to attend the court, every person guilty of such neglect shall pay a fine not exceeding twenty dollars, to be imposed by the same court to the use of the county in which the offence is committed.

on officers and others for neglect.  
R. S. 96, § 39.

SECT. 38. If such neglect occurs with regard to jurors required to serve on any other occasion than in the supreme judicial court, the

Same, in cases of highways, mills, &c.

1875-167

R. S. 95, § 40.  
1852, 814, § 7.  
1859, 196.

superior court, or before any justice of the peace, or sheriff or other officer before whom the fact shall be made known to the superior court, and the court, after due notice to the parties who are charged, shall impose a fine not exceeding \$100.

Punishment for  
fraud in drawing  
jurors.  
R. S. 95, § 41.  
1859, 196.

SECT. 39. If any city or town clerk is guilty of fraud, either by practising a trick, or in drawing a juror, or in returning another in his stead, or in any other manner, he shall be punished by a fine not exceeding \$100.

#### EXCEPTION OF SPECIAL JURIES.

Special juries not  
affected.  
R. S. 95, § 42.  
1857, 228.  
1858, 73.  
1859, 149.

SECT. 40. Nothing contained in this chapter shall be construed to limit the power and duty of coroners or magistrates when authorized by other provisions of law.

## CHAPTER

### OF JUDGMENT AND

#### ENTERING JUDGMENT; AWARDING AND ISSUING EXECUTION.

SECTION	81
1. Judgment, of what day to be entered.	2
2. Award of judgment on default.	1
3. Court may order damages to be assessed by jury;	2
4. or the damages may be ascertained by the clerk in certain cases.	2
5. Judgment may be rendered against such defendants as are defaulted, &c.;	3
6. how entered, and separate executions issued;	3
7. to be entered as of a former term in certain cases.	3
8. Interest on awards, reports, verdicts, judgments, &c.	3
9. Judgment on forfeiture of a penalty.	3
10. For what sum execution shall issue, and how determined.	3
11. <i>Scire facias</i> to recover further damages.	4
12. Proceedings thereon.	4
13. Plaintiff may sue for damages instead of penalty.	4
14. Execution, when action is brought in erroneous venue;	
15. when to issue;	4
16. not to issue after one year, &c.	4
17. Remedy for creditor after time for taking out execution;	4
18. when a levy is not effectual.	4
19. When property, &c., of a stockholder taken on execution against a corporation is recovered back.	4
20. Executions, forms of;	
21. changes in, to be under control of S. J. C.;	4
22. when returnable.	

#### SET-OFF OF EXECUTIONS.

23. Executions may be set off.	
24. Proceedings for that purpose.	1
25. Such set-off, when not to be allowed.	

DEATH, &c., OF OFFICER OR PARTY AFTER COMMENCEMENT OF LEVY.

SECTION

52. Case of death, &c., of officer after beginning to serve an execution.

53. Case of removal, &c., of officer.

54. Case of death of either party.

RECORDING OF CERTAIN EXECUTIONS.

SECTION

55. Execution on writ of entry to be recorded in registry of deeds.

PENALTY ON OFFICER FOR NOT PAYING MONEY COLLECTED.

56. Penalty for detaining money collected.

### ENTERING JUDGMENT; AWARDING AND ISSUING EXECUTION.

SECTION 1. Every judgment shall be entered as of the last day of the term in which it is rendered, unless there is an express order of the court for the entry thereof on some other day; in which case, the day shall be noted by the clerk on his docket. The court may enter up judgment upon default at any time after four days from the day of default.

Judgment, of what day to be entered.  
R. S. 97, § 1.  
1852, 312, § 11.  
8 Mass. 113.  
11 Mass. 204.  
16 Mass. 381.

SECT. 2. When the defendant is defaulted in any stage of the proceedings, the court shall award such judgment for the plaintiff as they shall upon inquiry find to be just and proper; unless the plaintiff or defendant moves to have the damages assessed by a jury, in which case they shall be so assessed.

Award of judgment on default.  
R. S. 97, § 2.

SECT. 3. The court may, in all cases in which damages are demanded, refer the assessment thereof to a jury, although it is not moved for by either party.

Court may order damages to be assessed by jury;  
R. S. 97, § 3.

SECT. 4. In actions upon promissory notes and other contracts where the amount due appears to be undisputed, the debt or damages may be assessed and ascertained by the clerk, under a general order of the court or by a special reference of the case to him. The judgment in either case shall be entered in the same form as if it had been awarded by the court on an assessment or computation made by themselves.

or damages may be ascertained by the clerk in certain cases.  
R. S. 97, § 4.

SECT. 5. In any action founded on a contract express or implied in which there is more than one defendant, the plaintiff shall be entitled to judgment against such defendants as are defaulted, and against those who upon trial are found liable on the contract declared on, notwithstanding it is found that all the defendants are not jointly liable thereon.

Judgment may be rendered against such defendants as are defaulted, &c.;  
1851, 255, § 1.  
12 Cush. 486.  
13 Allen, 217.

SECT. 6. In such action when any defendants are defaulted, and upon trial any of the others are found liable, the court shall render judgment both against those defendants defaulted and those found liable for the debt or damages with costs to the time of the default, and against those who defend, for all costs accruing after the default; and shall issue separate executions on such judgment.

how entered, and separate executions issued;  
1851, 255, § 2.

SECT. 7. When a motion for a new trial is overruled, the court shall enter judgment as of the term when the verdict was rendered, if necessary or expedient to secure the rights of the prevailing party, or prevent loss by reason of the death of either party or otherwise.

when to be entered as of a former term.  
1842, 89, § 2.  
2 Cush. 61.  
7 Mass. 395.  
12 Cush. 319.  
106 Mass. 341.

SECT. 8. When judgment is made up upon an award of county commissioners, a committee, or referees, or on the report of an auditor or master in chancery, or on a verdict of a jury, interest shall be computed upon the amount of the award, report, or verdict, from the time when made to the time of making up the judgment. Every judgment for the payment of money rendered subsequently to the sixth day of May in the year eighteen hundred and forty-seven, shall bear interest from the day of the rendition thereof. The warrant or execution issued on a judgment for the payment of money, shall specify the day upon which judgment is rendered, and shall require the collection or satisfaction thereof with interest from the day of its rendition.

Interest on awards, reports, verdicts, judgments, &c.  
1847, 153.  
1849, 124.  
2 Allen, 522.  
6 Allen, 244.

SECT. 9. In actions for a breach of the condition of a bond or to recover a penalty for the non-performance of a covenant, contract, or agreement, when it appears by verdict, default, confession, or otherwise, that the condition is broken or the penalty forfeited, judgment shall be

1154. 560

Judgment on forfeiture of a penalty.  
R. S. 100, § 8.  
7 Met. 116.  
13 Gray, 157.

11 Gray, 212.  
97 Mass. 16.  
98 Mass. 618.  
100 Mass. 191.  
104 Mass. 360.

For what sum  
execution shall  
issue, and how  
determined.

R. S. 100, § 9.  
1 Mass. 10.  
18 Gray, 157.  
100 Mass. 191.  
105 Mass. 48.

*Scire facias* to re-  
cover further  
damages.

R. S. 100, § 10.

Proceedings  
thereon.

R. S. 100, § 11.

Plaintiff may sue  
for damages in-  
stead of penalty.  
R. S. 100, § 12.

Execution, when  
action is brought  
in erroneous  
venue;

1852, 312, § 79.  
102 Mass. 371.

when to issue;  
R. S. 97, § 5.  
8 Met. 496.

not to issue  
after one year,  
&c.

1859, 16.  
5 Mass. 373.

Remedy for  
creditor after  
time for taking  
out execution;  
R. S. 97, § 8.  
1852, 312.

when a levy is  
not effectual;  
R. S. 97, § 42.  
10 Gray, 29.  
8 Allen, 429.

when property,  
&c., of a stock-  
holder taken on  
execution against  
a corporation is  
recovered back.  
1851, 212.

Executions,  
forms of.

1784, 28.  
R. S. 73, § 54.  
R. S. 97, § 10.  
1853, 269, § 1.  
10 Met. 330.  
See Ch. 103, § 47.  
6 Allen, 336.

entered for the penal sum, but no  
as is provided in the following sect

SECT. 10. The court shall award  
penal sum as is then due and pay  
the breach of the condition, or oth  
The sum shall be ascertained and  
court thinks proper or either party  
in which case it shall be so assessed

SECT. 11. If any further sum at  
or other contract, the plaintiff, h  
have a *scire facias*, on the judgm  
rendered, against the original defe  
heirs, devisees, or assigns, as the c  
breaches of the contract as have o  
party to show cause why executio  
judgment for the damages caused

SECT. 12. The sum due in such  
in the same manner as in the o  
accordingly; and like proceedings  
further breaches of the same conti  
whole of the penalty is exhausted.

SECT. 13. Nothing herein conta  
bringing an action for the breach  
instead of suing for the penalty by  
nant or contract was secured.

SECT. 14. When judgment is i  
an erroneous venue, the court shall  
needful writ of execution to be c  
county, so that the judgment may

SECT. 15. No execution shall  
after the entry of judgment.

SECT. 16. No original executio  
year after the party is entitled to  
other successive execution shall b  
within five years after the return d

SECT. 17. If a judgment rema  
the time for taking out execution  
*facias* to obtain a new execution, c  
ment have an action of contract th

SECT. 18. If an execution is re  
the sale of property not liable to  
recovered against the judgment  
execution on account of the seizur  
itor may have a writ of *scire faci*  
upon be entitled to a new executi  
and equitably due to him.

SECT. 19. If an execution agai  
or in part by service or levy on th  
thereof, and the property levied o  
subsequently recovered by such m  
creditor, the creditor may have a  
and shall thereupon be entitled to  
ing justly and equitably due to hi

SECT. 20. The forms of execut  
established by law and the usage  
tions issued upon judgments in c  
wealth shall be in form like those i  
by a justice of the peace, or polic  
ing twenty dollars, shall be so fran

and tenements of the debtor. Alterations in the forms may from time to time be made, or allowed by the courts, when necessary to adapt them to changes in the law, or for other sufficient reasons.

SECT. 21. All changes in the forms of executions shall be subject to the final control of the supreme judicial court, and said court may by general rules regulate such changes in all courts of the state.

SECT. 22. All executions shall be made returnable in sixty days from their date.

Executions, changes in, to be under control of S. J. C.; R. S. 97, § 11. when returnable; 1852, 312, § 83. 2 Met. 537, 580. 4 Cush. 420.

#### SET-OFF OF EXECUTIONS.

SECT. 23. Executions between the same parties may be set off one against another, if required by either party, as prescribed in the following sections.

18 Met. 482.

105 Mass. 283.

may be set off R. S. 97, § 74. 22 Pick. 210. 9 Met. 508.

SECT. 24. When one of the executions is delivered to an officer to be served, the debtor therein may deliver his execution to the same officer, whether the second execution is directed to the same or to any other officer, and the officer shall apply it as far as it will extend to the satisfaction of the first execution; and the balance due on the larger execution may be collected and paid in the same manner as if there had been no set-off.

Proceedings for that purpose. R. S. 97, § 75.

SECT. 25. Such set-off shall not be allowed in the following cases:—

First. When the creditor in one of the executions is not, in the same capacity and trust, the debtor in the other;

Second. When the sum due on the first execution was lawfully and in good faith assigned to another person before the creditor in the second execution became entitled to the sum due thereon;

Third. When there are several creditors in one execution and the sum due on the other is due from a part of them only;

Fourth. When there are several debtors in one execution and the sum due on the other is due to a part of them only;

Fifth. Nor shall it be allowed as to so much of the first execution as is due to the attorney in that suit for his fees and disbursements therein.

Such set-off, when not to be allowed. R. S. 97, § 76. 9 Met. 508.

#### LEVY OF EXECUTIONS, AND PERSONAL PROPERTY EXEMPT THEREFROM.

SECT. 26. When an execution is in the alternative, so that it may be lawfully served in either of two or more ways, the creditor or his attorney may require the officer to serve it in either way; and the officer shall conform to such directions if in his power.

3 Gray, 497.

Creditor may direct mode of service. R. S. 97, § 12. 11 Mass. 817. 2 Gray, 210.

SECT. 27. If the creditor directs an officer to levy his execution on real estate, the officer shall serve it as prescribed in chapter one hundred and three. If he directs the officer to levy it on the goods of the debtor, the officer shall serve it as hereinafter provided.

Officer, how to levy on real and personal estate; R. S. 97, §§ 16, 17. 7 Mass. 128.

SECT. 28. Executions against corporations, when levied upon any corporate property, shall be levied in the same manner as other executions are levied, except in the cases provided for in chapters fifty-seven and sixty-eight.

how on property of a corporation. R. S. 97, § 42.

SECT. 29. All chattels, real or personal, and all other goods which by the common law are liable to be taken on execution, may be taken and sold thereon, except as is otherwise provided in this chapter.

3 Pick. 868.

13 Allen, 449.

What goods liable to execution. R. S. 97, § 19. 7 Mass. 128. 17 Mass. 408.

SECT. 30. Current gold or silver coin may be taken on execution, and may be paid to the creditor as money collected.

Current coin. R. S. 97, § 20.

SECT. 31. Bank notes and all other bills or evidences of debt, issued by a moneyed corporation and circulated as money, may be taken on execution and paid to the creditor at their par value as money collected if he will accept them; otherwise they shall be sold like other chattels.

20 Pick. 352.

Bank notes. R. S. 97, § 21. 4 N. H. R. 198. 3 Mass. 291. 7 Mass. 438. 9 Mass. 587. 1 Pick. 271.

SECT. 32. The following articles of the debtor shall be exempt from execution, viz.:—

What goods are exempt from execution.

1084. 52

F 300.

1074, 35

1857, 225.  
1859, 142.  
8 Mass. 196.  
5 Mass. 313.  
13 Mass. 82.  
15 Mass. 170, 205.  
2 Pick. 80.  
10 Pick. 422.  
10 Pick. 470.  
10 Mot. 506.  
4 Cush. 359.  
6 Gray, 298.  
7 Gray, 67, 70.  
9 Gray, 62.  
10 Gray, 242.  
11 Gray, 211.  
12 Gray, 351.  
1 Allen, 243.  
2 Allen, 219, 395.  
3 Allen, 570.  
4 Allen, 157.  
5 Allen, 43, 148, 158.  
6 Allen, 292.  
8 Allen, 583.  
9 Allen, 156.  
11 Allen, 582.  
101 Mass. 105.  
108 Mass. 181.  
See 1860, 65.

First. The necessary wearing apparel of himself and of his wife and children; one bedstead, bed, and the necessary bedding for every two persons of the family; one iron stove used for warming the dwelling-house, and fuel not exceeding the value of twenty dollars procured and designed for the use of the family;

Second. Other household furniture necessary for him and his family, not exceeding one hundred dollars in value;

Third. The bibles, school books, and library, used by him or his family, not exceeding fifty dollars in value;

Fourth. One cow, six sheep, one swine, and two tons of hay;

Fifth. The tools, implements, and fixtures, necessary for carrying on his trade or business, not exceeding one hundred dollars in value;

Sixth. Materials and stock designed and procured by him, and necessary for carrying on his trade or business, and intended to be used or wrought therein, not exceeding one hundred dollars in value;

Seventh. Provisions necessary and procured and intended for the use of the family, not exceeding fifty dollars in value;

Eighth. One pew occupied by him or his family in a house of public worship: *provided*, that nothing herein contained shall prevent the sale of any pew for the non-payment of any tax legally laid thereon;

Ninth. The boat, fishing tackle, and nets of fishermen, actually used by them in the prosecution of their business, to the value of one hundred dollars;

Tenth. The uniform of an officer or soldier in the militia, and the arms and accoutrements required by law to be kept by him;

Eleventh. Rights of burial and tombs while in use as repositories for the dead.

SECT. 33. If there is reasonable doubt as to the ownership of the goods, or as to their liability to be taken on the execution, the officer may require sufficient security to indemnify him for taking them.

Officer may demand security of creditor.  
R. S. 97, § 18.

#### SALE, &c., OF GOODS TAKEN ON EXECUTION.

Goods, how sold on execution.  
R. S. 97, § 22.  
14 Mass. 473.  
13 Allen, 449.

Notice of sale, how given.  
R. S. 97, § 24.

how when value exceeds \$300.  
R. S. 97, § 25.

Sale may be adjourned, &c.  
R. S. 97, § 26.  
9 Mass. 266.

Reason to be made in case, &c.  
R. S. 97, § 27.

SECT. 34. Goods seized on execution, at the expense of the debtor, sold by public auction within fourteen days hereinafter provided, unless the debtor otherwise satisfying the execution.

SECT. 35. The officer shall give notice of the sale, by causing notifications to be posted in some public place in the town where the sale is to be made, the time and place of sale to be published in the county, if there is any such paper.

SECT. 36. If the value of the goods exceeds one hundred dollars, the officer, if requested of the sale by advertisement in a newspaper; and the sale may be made on any day of four days, and within thirty days after the seizure.

SECT. 37. If at the time appointed for the sale there shall be no person present for the interest of all persons concerned, the officer may adjourn the sale for want of purchasers or other sufficient cause, until the sale is completed, and may adjournment by a public declaration previously appointed for the sale.

SECT. 38. If the highest bidder shall not take and pay for it, the officer shall resell the goods at the same time or within ten days thereafter, giving

he shall account for what he receives on the second sale, and for any damages recovered of the first bidder for a loss on the resale, as for so much received on the execution.

SECT. 39. The officer making such sale shall in his return of the execution particularly describe the goods sold, and the sum for which each article was sold; and if he is guilty of fraud in the sale or return, he shall be liable in an action of tort, at the suit of the party injured, for five times the amount of the actual damage sustained by reason of such fraud.

7 Mass. 382.

Return of execution. Liability for fraud.  
R. S. 40, § 18.  
R. S. 97, § 28.  
1852, § 12.  
102 Mass. 427.

SECT. 40. The money arising from the sale shall be applied to paying the charges and satisfying the execution, and the officer shall return the residue, if any, to the debtor on demand, or shall apply and pay over the same as provided in the following sections.

Proceeds of sale, how disposed of;  
R. S. 97, § 29.

SECT. 41. If the goods sold on execution have been attached by another creditor, or seized on another execution, either by the same or any other officer, or if before the payment of such residue to the debtor another writ of attachment or execution against him is delivered to the officer who made the sale, the proceeds of the sale shall be applied to the discharge of the several judgments in the order in which the respective writs of attachment or execution were served, and the residue, if any, shall be returned to the debtor.

when liable to two or more creditors;  
R. S. 97, § 30.

SECT. 42. If an attachment or seizure on execution is made of a share in any incorporated company, or of any other property which may be attached without taking and keeping the exclusive possession thereof, and if the same property is subsequently attached or taken in execution by another officer, he shall give notice thereof to the officer who makes the sale under the first attachment or seizure; and if the latter without such notice pays to the debtor the balance of the proceeds of the sale, he shall not be liable therefor to the person claiming under such subsequent attachment or seizure.

when there have been successive attachments.  
R. S. 97, § 31.  
9 Mass. 265.  
See 1870, 291, § 1.

#### LEVY, &c., ON SHARES IN CORPORATIONS.

SECT. 43. The share or interest of a stockholder in any corporation established under the authority of this state, may be taken on execution and sold as hereinafter provided.

Shares in corporations.  
R. S. 97, § 36.  
See 1870, 291, § 1.

SECT. 44. If the property has not been attached in the same suit, the officer shall leave an attested copy of the execution with the clerk, treasurer, or cashier, of the company, if there is any such officer, otherwise with any officer or person having the custody of the books and papers of the corporation; and the property shall be considered as seized on execution when the copy is so left, and shall be sold in like manner as goods and chattels.

Proceedings.  
R. S. 97, § 37.

SECT. 45. If the share is already attached in the same suit, the officer shall proceed in seizing and selling it on the execution, in the same manner as in selling goods and chattels.

Same subject.  
R. S. 97, § 38.

SECT. 46. The officer of the company who is appointed to keep a record or account of the shares or interest of the stockholders therein, shall, upon the exhibiting to him of the execution, be bound to give a certificate of the number of shares or amount of the interest held by the judgment debtor, in like manner and upon the like penalty as is prescribed in chapter one hundred and twenty-three upon the exhibiting to him of a writ of attachment.

Officer of company to make known the shares held by debtor;  
R. S. 97, § 39.  
See Ch. 123, § 61.

SECT. 47. An attested copy of the execution and of the return thereon shall within fourteen days after the sale be left with the officer of the company whose duty it is to record transfers of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him, upon paying the fees therefor and for recording the transfer.

to give new certificates to purchaser.  
R. S. 97, § 40.

Purchaser entitled to dividends after attachment.  
R. S. 97, § 41.

SECT. 48. If the shares attached in the suit in which be entitled to all the dividend.

. LEVY, &c.,

Terms for years, when to be levied on as real or personal estate.  
R. S. 97, § 33.  
1847, 267, § 4.  
See Ch. 90, § 20.

SECT. 49. Terms for years, when the original lease was for one hundred years or more, and so long as fifty years or more thereof remain unexpired, shall be regarded as real estate so far as concerns the levying of an execution thereon. Other terms for years shall be seized and sold on execution in like manner as personal chattels, except that the officer before selling the same shall give fourteen days' notice of the time and place of sale, by leaving notice thereof in writing with the debtor personally or at his last and usual place of abode, and by posting notice on the demised premises.

#### SUSPENSION OF LEVY.

Execution suspended by prior attachment.  
R. S. 97, § 34.  
3 Met. 246, 251.  
5 Met. 90.  
13 Allen, 264.  
97 Mass. 339.  
Same subject.  
R. S. 97, § 35.

SECT. 50. When any estate, either real or personal, is seized on execution, and the further service of the execution is suspended by reason of any prior attachment on the same estate, the estate shall remain bound by such seizure until it is set off or sold, in whole or in part, under the prior attachment, or until that attachment is dissolved.

SECT. 51. If the estate is set off or sold in part under the prior attachment, or if that attachment is dissolved, the estate, or such part thereof as remains undisposed of, shall continue bound for thirty days thereafter, by the seizure on the execution; and the service of the execution may be completed in like manner as if the estate had been first seized thereon at any time within said thirty days, although the return day of the execution has passed.

#### DEATH, &c., OF OFFICER OR PARTY AFTER COMMENCEMENT OF LEVY.

Case of death, &c., of officer after beginning to serve an execution;  
R. S. 97, § 13.  
2 Pick. 276.

SECT. 52. When an officer has begun to serve an execution and dies, or is incapable of completing the service and return thereof, the same may be completed by any other officer who might by law have served the execution if originally delivered. . . . .  
made a certificate of his doings, he finds to have been done by him, or of his own doings in completing the same.

of removal, &c., of officer;  
R. S. 97, § 14.  
6 Mass. 20.  
9 Mass. 333.  
13 Allen, 262.

SECT. 53. When an officer has begun to complete the service and return thereof, or the service cannot be completed by him, the same may be completed by any other officer who might by law have served the execution if originally delivered.

of death of either party.  
R. S. 97, § 15.  
9 Mass. 200.  
3 Met. 253.

SECT. 54. If either party dies, or is incapable of completing the service, the same may be completed in like manner and with the same effect as if the party had been seized on execution, like manner and with the same effect as if the party had been seized on execution, and the officer, when necessary, may complete the service.

#### RECORDING OF

Execution on writ of entry to be recorded in registry of deeds.  
1848, 144, § 1.  
7 Gray, 202.  
1 Allen, 61.  
See 1866, 197.

SECT. 55. When an execution is returned for the possession of real estate within three months after the return, the clerk's office, cause the execution to be recorded in the registry of deeds, and if the estate is situated, the expense of recording the same.



## PENALTY ON OFFICER FOR NOT PAYING MONEY COLLECTED.

SECT. 56. If any officer unreasonably neglects to pay any money collected by him on execution, when demanded by the creditor there he shall forfeit and pay to the creditor five times the lawful interest the money from the time of the demand until it is paid.

## TITLE III.

## OF REMEDIES RELATING TO REAL PROPERTY.

CHAPTER 134. — Of the Writ of Entry, and Petitions for the Settlement of Title.

CHAPTER 135. — Of the Writ of Dower.

CHAPTER 136. — Of the Partition of Lands.

CHAPTER 137. — Of Forcible Entry and Detainer.

CHAPTER 138. — Of Waste and Trespass on Real Estate.

CHAPTER 139. — Of Actions for Private Nuisances.

CHAPTER 140. — Of the Foreclosure and Redemption of Mortgages.

CHAPTER 141. — Of Informations for Intrusion and the Recovery of Lands in the Commonwealth.

## CHAPTER 134.

## OF THE WRIT OF ENTRY, AND PETITIONS FOR THE SETTLEMENT OF TITLE.

## Section

1. Action to recover the freehold.
2. Declaration therein.
3. Proof of the seisin alleged.
4. Descent, &c., not to bar right of entry.
- 5, 6. What constitutes a disseisin.
7. Proceedings on the trial.
8. Pleadings and evidence.
9. Joint tenants, &c., how to sue.
10. Demandant may recover part, &c.
11. On death of either party, action may proceed, &c.
12. Pleadings.
13. Damages may be recovered in same action;
14. may be assessed by same jury, unless, &c.
15. Rents and profits, how to be estimated.
16. Use of improvements not included.
17. Limitation.
18. Tenants for six years allowed for improvements;
19. so when for less than six years if under title, &c.
20. Proceedings for obtaining such allowance.

## Section

21. When suggestion entered.
22. Amount may be assessed by the jury on trial, or afterwards.
23. How to be assessed, upon default, &c.
24. May be assessed by arbitrators, &c.
25. Allowance for improvements, how limited.
26. Improvements and damages to be set off.
27. Demandant, when to pay for improvements, &c.
28. Further provisions as to set-off.
29. Demandant's remedy against other trespassers.
30. Value of premises, without improvements, may be ascertained, &c.
31. How to be estimated and assessed.
32. Demandant may relinquish his estate, &c.
33. Time may be allowed for making the election.
34. Tenant to hold estate upon paying value assessed.
35. To be paid in three annual instalments.
36. Upon failure to pay, demandant entitled to his writ of seisin, &c.

## SECTION

37. Execution may be issued after the year &c.  
 38. Remedy for tenant in case of a sub-  
 eviction;  
 39. if he has given notice, &c.;  
 40. if notice not given.  
 41. On the death of either party after jud-  
 money may be paid, &c.  
 42. Writ of seisin, in whose name to issue  
 case.

Action to recover  
 the freehold.  
 R. S. 101, § 1.  
 6 Cush. 285.

Declaration  
 therein.  
 R. S. 101, §§ 2, 3.  
 2 Mass. 176.  
 3 Met. 341.  
 1 Cush. 468.  
 See Ch. 129, § 2.  
 14 Gray, 109.  
 97 Mass. 85.

Proof of the  
 seisin alleged.  
 R. S. 101, § 4.  
 21 Pick. 220.  
 8 Allen, 597.  
 13 Allen, 288, 348.

Descent, &c., not  
 to bar right of  
 entry  
 R. S. 101, § 5.  
 What constitutes  
 a disseisin.  
 R. S. 101, § 6.  
 29 Mass. 9.

Same subject.  
 R. S. 101, § 7.  
 2 Gray, 186.

Proceedings on  
 the trial.  
 R. S. 101, § 8.  
 102 Mass. 374.

Pleadings and  
 evidence.  
 R. S. 101, § 9.  
 See Ch. 129, § 84.

Joint tenants,  
 &c., how to sue.  
 R. S. 101, § 10.  
 4 Gray, 428.  
 13 Gray, 168.

Demandant may  
 recover part, &c.  
 R. S. 101, § 11.  
 2 Pick. 387.

On death of either  
 party action  
 may proceed, &c.

SECTION 1. All estates of f  
 for life, may be recovered by  
 different action is prescribed b

SECT. 2. The demandant  
 twenty years then last past, w  
 shall allege a disseisin by the  
 the profits; and he shall then  
 premises, whether it is in fee s  
 whether it is for his own life  
 be required to set forth the or  
 title, by which he claims the e

SECT. 3. The demandant  
 entry under his title, but if l  
 estate as he claims in the pren  
 or otherwise, and also that he  
 deemed sufficient proof of his  
 such action shall be maintaine  
 commencing the same a right

SECT. 4. No descent or dis  
 right of entry or of action for

SECT. 5. Every person wh  
 in such writ of entry, claimin  
 considered as a disseisor for t  
 was the manner of his original

SECT. 6. If the person in p  
 ant or withheld from him the  
 election of the demandant, be  
 trying the right, although he c

SECT. 7. Every suit upon  
 conducted in the same manne  
 commencing the action made  
 and had been immediately ou  
 the general issue, if the dema  
 estate in the premises as is set  
 a right of entry on the day  
 recover the premises, unless tl

SECT. 8. The law and prac  
 in the action or writ of entry  
 lished, shall continue in fore  
 provisions of this chapter, and

SECT. 9. Any two or more  
 joint tenants, tenants in comp  
 the recovery thereof, or any o

SECT. 10. The demandant  
 ises or any undivided portio  
 title, though such part or port

SECT. 11. Upon the death  
 may proceed by or against th

deceased party, in the manner prescribed in chapter one hundred and twenty-seven. B. S. 101, § 12

SECT. 12. Non-tenure, disclaimer, several tenancy, and sole tenancy, may be pleaded in abatement or given in evidence under the general issue, but the party shall be allowed such costs only as accrue after the filing of the plea. 12 Met. 154. 7 Cush. 502. 4 Gray, 55. 13 Allen, 286. 98 Mass. 500. Pleadings. R. S. 101, § 12. 1836, 273, § 1. 2 N. H. 10, 442. 13 Mass. 439. 14 Mass. 289. 108 N. H. 232

SECT. 13. If the demandant recovers judgment in a writ of entry, he shall be entitled to recover in the same action damages for the rents and profits of the premises, from the time when his title accrued, subject to the limitations hereinafter contained; and he shall also recover damages for any destruction or waste of the buildings or other property, for which the tenant is by law chargeable. Damages may be recovered in same action; R. S. 101, § 14. 2 Met. 295. 6 Cush. 267. 4 Gray, 57. 11 Gray, 17. 105 Mass. 332. See 1864, 302.

SECT. 14. If an issue of fact is found for the demandant, the jury shall at the same time assess his damages, unless it is otherwise ordered by the court as hereinafter provided. may be assessed by same jury, unless, &c. R. S. 101, § 15. 8 Gray, 435. 104 Mass. 12.

SECT. 15. The rents and profits for which the tenant is liable shall be the clear annual value of the premises for the time during which he was in possession thereof, after deducting all lawful taxes and assessments on the premises that have been paid by him, and all the necessary and ordinary expenses of cultivating the land, or of otherwise collecting the rents, profits, or income, of the premises. Rents and profits, how to be estimated. R. S. 101, § 16. 2 Met. 295. 6 Cush. 269. 103 Mass. 146. 104 Mass. 12.

SECT. 16. In estimating the rents and profits, the value of the use by the tenant of any improvements, whether made by himself or those under whom he claims, shall not be computed nor allowed to the demandant. Use of improvements not included. R. S. 101, § 17. 12 Mass. 314. 4 Cowen, 188. 6 Cush. 269.

SECT. 17. The tenant shall not be liable for the rents and profits for a longer term than six years, nor for any waste or other damage committed before that time, unless when the rents and profits are allowed by way of set-off to his claim for improvements, as hereinafter provided. Limitation. R. S. 101, § 18. 6 Cush. 269. See § 28.

SECT. 18. If the demanded premises have been actually held and possessed by the tenant in the action, and by those under whom he claims, for six years next before the commencement of the action, he shall, if judgment is against him, be entitled to compensation in the manner hereinafter provided for the value of any buildings or improvements made or erected on the premises by himself, or by any person under whom he claims. 8 Allen, 363. 100 Mass. 177. 102 Mass. 58. See 1864, 302. Tenants for six years allowed for improvements; R. S. 101, § 19. 12 Mass. 329. 13 Mass. 241. 15 Mass. 231. 5 Pick. 140. 7 Met. 310. 15 Gray, 36. 117 N. H. 560

SECT. 19. The tenant shall also be entitled to the like compensation although the premises have not been so held six years, if he holds them under a title which he had reason to believe good. so when for less than six years if under title. R. S. 101, § 20. 2 Gallis, 106. 6 Mass. 308. 109 N. H. 266. 117 N. H. 610. 393

SECT. 20. When the tenant in the action claims allowance for such improvements, he shall enter on the record a suggestion of his claim, with a request that the value of the improvements may be ascertained and allowed to him, if judgment is rendered for the demandant. Proceedings for obtaining such allowance. R. S. 101, § 21. See 1864, 302.

SECT. 21. The suggestion shall be entered at the same term with the plea, if any, unless the court for sufficient reason allows it to be made afterwards; and if judgment is rendered for the demandant without a plea, the suggestion shall be entered at such stage of the proceedings as the court prescribes or allows. When suggestion entered. R. S. 101, § 22.

SECT. 22. If any issue of fact is tried in the case and found for the demandant, the jury shall at the same time ascertain and determine the sum to be allowed to the tenant for such improvements, unless it appears to the court, on the motion of either party, that it would be more convenient to postpone the assessment of the sums due to the demandant for the rents and profits or other damages, or to the tenant for improvements, until after the trial of the title and a verdict thereon; in which case the court may make an order for that purpose, at any time before the verdict on the title is recorded. Amount may be assessed by the jury on the trial, or afterwards. R. S. 101, § 23. 24. 8 Gray, 435. 11 Allen, 106.

SECT. 23. If the assessment of the sums due to either party is so How to be as-

assessed upon default, &c.  
R. S. 101, § 25.

Damage may be assessed by arbitrators, &c.  
R. S. 101, § 26.

Allowance for improvements, how limited.  
R. S. 101, § 27.

Improvements and damages to be set off.  
R. S. 101, § 28.

Demandant, when to pay for improvements, &c.  
R. S. 101, § 29.  
See 1864, 802.

Further provisions as to set-off.  
R. S. 101, § 30.

Demandant's remedy against other trespassers.  
R. S. 101, § 31.  
6 Cush. 283.

Value of premises without improvements may be ascertained, &c.  
R. S. 101, § 32.

How to be estimated and assessed.  
R. S. 101, § 33.

Demandant may relinquish his estate, &c.  
R. S. 101, §§ 34, 35.

Time may be allowed for making the election.  
R. S. 101, § 36.

Tenant to hold estate upon paying value assessed.  
R. S. 101, § 37.

To be paid in

postponed, or if there is no issue of fact tried in the cause, and judgment is to be rendered for the demandant, said sums shall be assessed by the court, unless either party moves to have them assessed by a jury, or unless the court thinks proper to have them so assessed, in which cases a jury shall be empanelled for that purpose.

SECT. 24. The sums due for rents and profits, or other damages, and for improvements, may in all cases be assessed by arbitrators or assessors appointed by the court with the consent of the parties.

SECT. 25. The sum to be allowed for improvements shall never exceed the amount actually expended by the tenant and those under whom he claims, nor shall it exceed the amount to which the value of the premises is actually increased thereby at the time of the assessment.

SECT. 26. When any sum is allowed to the tenant for improvements, it shall be set off against the sum found due from him for rents and profits and other damages; and if there is a balance due from him, the demandant shall have judgment and execution therefor, as well as for his seisin of the demanded premises.

SECT. 27. If there is any sum due to the tenant for improvements after deducting the rents and profits and other damages for which he may be found chargeable, the demandant shall before taking out his execution for seisin of the premises, pay the same to the tenant, or to the clerk of the court for his use; and the demandant shall not be entitled to recover, against the tenant or person claiming under him, any rents and profits that accrue after the judgment and before he has paid the sum so due.

SECT. 28. If the sum found due to the tenant for improvements exceeds the sum due from him for the rents and profits accrued within the six years, he shall be chargeable with the rents and profits accrued before that time, so far as may be necessary to balance his claim for improvements; but in such case he shall not be liable to repay any excess of the rents and profits beyond the value of the improvements.

SECT. 29. Nothing contained in this chapter shall prevent the demandant from maintaining an action of trespass for mesne profits, or for damage done to the premises, against any person, except the tenant in the writ of entry, who may have had possession of the premises or may be otherwise liable to such action.

SECT. 30. When the tenant in the action claims allowance for improvements as before provided, the demandant may, by a like entry on the record, require that the value of his estate in the demanded premises without the improvements be ascertained and determined.

SECT. 31. The value of the premises in such case shall be estimated as it would have been at the time of the inquiry if no such buildings or improvements had been made or erected on the premises by the tenant or by any person under whom he claims; and this sum shall be ascertained and determined, either by the court or jury, or by arbitrators or assessors, in the same manner as is provided for assessing the sums due for rents and profits, and for improvements.

SECT. 32. The demandant in such case, if judgment is rendered for him, may at any time during the same term by himself or his attorney enter on the record his election to relinquish his estate in the premises to the tenant, at the price or value thereof so ascertained and determined.

SECT. 33. If he requires further time to make his election, the court may, on his motion, suspend the entry of the judgment and continue the cause, but without further costs for him.

SECT. 34. If he relinquishes the premises as before provided, the tenant shall thenceforth hold all the estate that the demandant had therein at the commencement of the action: *provided*, he pays therefor the estimated price or value thereof, in the manner following.

SECT. 35. The price shall be paid in three equal instalments, with

interest annually; the first instalment to be paid on or before the expiration of one year from the time when the demandant's election to relinquish the premises is entered on the record, the second, on or before the expiration of two years from the time before mentioned, and the third, on or before the expiration of three years from the same time.

three annual instalments.  
R. S. 101, § 38.

SECT. 36. The sums shall be paid to the demandant or to the clerk of the court for his use, and if the tenant fails to make either of the payments within the times before limited therefor, respectively, the demandant shall be entitled forthwith to take out his writ of seisin on the judgment recovered by him, and shall take and hold the premises without allowance for any improvements made thereon.

Upon failure to pay, demandant entitled to his writ of seisin.  
R. S. 101, § 39.

SECT. 37. The expiration of a year after the judgment shall not prevent the issuing of the execution or writ of seisin in the case mentioned in the preceding section, but it may be taken out at any time within three months after such default of payment on the part of the tenant.

Execution may be issued after the year when, &c.  
R. S. 101, § 40.

SECT. 38. If the tenant or his heirs or assigns after the premises are so relinquished to him are evicted thereof by force of any better title than that of the original demandant, the person so evicted may recover from his demandant or his executors, administrators, heirs, or devisees, as the case may be, the amount so paid for the premises, as so much money had and received by such demandant in his lifetime for the use of the plaintiff, with lawful interest from the time of such payment.

Remedy for tenant in case of a subsequent eviction;  
R. S. 101, § 41.

SECT. 39. If the tenant or person holding under him, when impleaded in such second action for the recovery of the premises, gives notice thereof to the person so liable to refund the purchase money, and permits him to defend the action, the judgment, if rendered against the tenant in the action, shall be conclusive as to his right to recover the amount so paid for the premises.

If he has given notice, &c.,  
R. S. 101, § 42.

SECT. 40. If the person impleaded does not give such notice to the other party and permit him to defend the suit, the latter shall be permitted in the suit afterwards brought against him for the price paid for the premises, to deny the title upon which the second recovery was had; and the party so evicted shall not recover said price unless he proves that he was evicted by force of a better title than that of the original demandant.

If notice not given.  
R. S. 101, § 43.

SECT. 41. If, after judgment is rendered for the demandant in a writ of entry, either party dies before the writ of seisin is executed, or before the case is otherwise settled according to the foregoing provisions, any money payable by the tenant may be paid by him or his executors or administrators, or by any person entitled to the estate under him, to the demandant or his executors or administrators, in like manner and with the like effect as if both parties were living; and any money payable by the demandant may be paid by him, his executors, administrators, or any person entitled to the estate under him, to the tenant or his executors or administrators, in like manner and with the like effect as if both parties were living.

On the death of either party after judgment, money may be paid, &c.  
R. S. 101, § 44.

SECT. 42. When the writ of seisin is issued in such case, it shall be in the name of the original demandant against the original tenant, although either or both of them are dead; and when executed, it shall inure to the benefit of the demandant or whoever is entitled to the premises under him, in like manner as if it had been executed on the day when the judgment was rendered.

Writ of seisin, in whose name to issue in such case.  
R. S. 101, § 45.

SECT. 43. If the demandant in a writ of entry claims an estate for life only in the premises, and if he pays any sum allowed to the tenant for improvements, he or his executors or administrators at the determination of his estate shall be entitled to receive of the remainder-man or reversioner the value of the improvements, as they then exist; and shall have a lien on the premises in like manner as if they had been mortgaged for the payment, and may keep possession until the sum is paid.

Upon a recovery by tenant for life, reversioner, &c., to be liable.  
R. S. 101, § 46.

Amount, how as-  
certained.  
R. S. 101, § 47.

SECT. 44. If the amount so d  
sioner is not agreed on by the part  
mined as is provided for the red  
in equity, to be brought by the re  
gagor; and the like proceedings  
case for ascertaining the sum due  
for the recovery thereof by the re

Same subject.  
R. S. 101, § 48.

SECT. 45. The remainder-man  
him, shall not in such case be lin  
the redemption of a mortgage; bu  
titled to recover from the adverse  
the rents and profits of the premis  
tion of the estate for life exceed th

Limitation.  
R. S. 101, § 49.

SECT. 46. Such remainder-ma  
under him shall be considered as o  
tion of the life estate, so far as to  
remedy by action or by entry, for  
expiration of the time prescribed f  
and of action in cases of disseisin.

This chapter not  
to apply to a  
mortgagee.  
R. S. 101, § 50.  
12 Allen, 78.

SECT. 47. Nothing contained  
and profits to be recovered in a v  
provements made on the demanc  
mated value of the premises with  
apply to an action brought by a m  
a mortgagor or his heirs or assign  
premises.

Certain real ac-  
tions abolished.  
Savings for mi-  
nors and others.  
R. S. 101, §§ 51,  
52.  
10 Allen, 557.

SECT. 48. Writs of right and  
except that which is allowed in t  
that any person who on the thir  
one thousand eight hundred and  
any of said actions, and was then  
a married woman, insane, impris  
United States, may bring such a  
after the disability shall cease, or  
abled; but no such action shall be  
barred by the statutes of limitati  
the time when the Revised Statut

Party in posses-  
sion claiming  
freehold, &c.,  
may petition B.  
J. C. to compel  
claimant to try  
title.  
1852, 312, § 52.  
12 Cush, 186.  
1 Gray, 416.  
4 Gray, 82.  
4 Allen, 150.  
102 Mass. 374.

SECT. 49. Any person in poss  
estate of freehold or an unexpired  
file a petition in the supreme judicia  
of inheritance, for life, or years, de  
is credibly informed and believes t  
adverse to the estate of the petiti  
moned to show cause why he sh  
alleged title. Thereupon the cou  
the respondent, and upon return  
if the respondent so summoned m  
obeys the lawful order of the cour  
the court shall enter a decree, that  
from having or claiming any righ  
the premises described. If the pe  
be inserted like a declaration in  
of original summons.

Proceedings on  
such petition.  
1852, 312, § 53.  
1 Gray, 416.  
99 Mass. 209.  
103 Mass. 144.

SECT. 50. If the respondent ap  
adverse to the petitioner, he shall  
he shall by answer show cause w  
an action and try such title; an  
respecting the bringing and pros  
equitable and just.

decree  
1873-188  
1164.558  
1177.504  
506.

## CHAPTER 135.

## OF THE WRIT OF DOWER.

## SECTION

1. Dower may be recovered by action ;
2. must be previously demanded.
3. What a sufficient demand.
4. Damages.
5. Action against tenant of freehold. Damages.

## SECTION

6. Damages against prior tenant, in case, &c.
7. Writ of seisin, how executed ;
8. when tenement cannot be divided.
9. Dower in certain cases of divorce.
10. General provisions.

SECTION 1. When a woman is entitled to dower and it is not set out to her by the heir or other tenant of the freehold to her satisfaction according to the true intentment of law, nor assigned to her by the probate court, she may recover the same by a writ of dower in the manner hereinafter provided. 6 Gray, 314. See Ch. 90, § 6. 8 Allen, 211. 9 Allen, 254.

SECT. 2. She shall demand her dower of the person seised of the freehold at the time of making the demand, and shall not commence her action therefor before the expiration of one month, nor after the expiration of one year, from such demand ; but this shall not preclude her from making a new demand and commencing an action thereon.

SECT. 3. A demand of dower in writing, signed by the widow or by her agent or attorney, containing a general description of the premises in which the dower is claimed, and given to the tenant of the freehold or left at his last and usual place of abode, shall be a sufficient demand of dower.

SECT. 4. (R.) [If the demandant recovers judgment for her dower, she shall in the same suit recover damages for its detention.]

(R.) *Repeal and substitute.* 1869, 418.

SECT. 5. The action shall be brought against the tenant of the freehold at the time when it is commenced ; but if the demand was not made on him, he shall be liable for damages only for the time during which he held the premises.

SECT. 6. In such case if the demandant recovers her dower and damages in the writ of dower, she may afterwards maintain an action of tort against the prior tenant of the freehold of whom her demand was made, for the rents and profits for the time during which he held the premises after the demand.

SECT. 7. (R.) [If the demandant recovers her dower, a writ of seisin shall be issued, requiring the officer to cause it to be set out by three disinterested persons appointed by the court ; and they shall be sworn before a justice of the peace or the officer who serves the writ, to set out the same equally and impartially, and as conveniently as may be, according to their best skill and judgment. Said persons may also be authorized, by agreement of parties, to assess the damages for detention of dower.]

SECT. 8. When the estate consists of a mill or other tenement which cannot be divided without damage to the whole, the dower may be assigned of the rents, issues, or profits, to be had and received by the demandant as tenant in common with the other owners. 9 Allen, 254.

SECT. 9. A woman divorced from her husband for the cause of adultery committed by him, or on account of his being sentenced to confinement to hard labor, may recover her dower in the manner provided in this chapter against whoever is the tenant of the freehold.

SECT. 10. The provisions contained in chapter ninety as to the lands out of which dower may be claimed, the manner in which it may be barred, and the liability of the tenant for waste, shall be applied and enforced when dower is demanded or recovered by force of this chapter.

Dower, how recovered ;  
R. S. 60, § 5.  
R. S. 102, § 1.  
12 Mass. 435  
1 Pick. 189, 317.  
5 Met. 277.

must be previously demanded ;  
R. S. 102, § 2.  
12 Met. 557.  
9 Gray, 198.

what a sufficient demand.  
1865, 438, § 1.

Damages.  
R. S. 102, § 2.

Action against tenant of freehold. Damages.  
R. S. 102, § 4.  
12 Mass. 435.  
16 Mass. 55.

Damages against prior tenant, in case, &c.  
R. S. 102, § 5.  
1852, 312.

Writ of seisin, how executed ;  
R. S. 102, § 6.  
1848, 317.  
9 Allen, 254.  
(R.) *Repeal and substitute.*  
1869, 418.  
1874, 34.

when tenement cannot be divided.  
R. S. 102, § 7.  
5 N. H. R. 124.  
18 Pick. 237.  
Dower in certain cases of divorce.  
R. S. 102, § 8.

General provisions.  
R. S. 102, § 9.

## CHAPTER 136.

## OF THE PARTITION OF LANDS.

## IN COURTS OF COMMON LAW.

## SECTION

1. Partition, how made;
2. upon petition by one or more;
3. by one who has an estate in possession;
4. by a tenant for years, in what cases.
5. Duration of the partition.
6. Substance of the petition for partition.
7. Petition to be indorsed.
8. Filing and notice thereof.
9. Notice, how to be served;
10. to persons absent or unknown.
11. Proceedings in such case.
12. Defects in service, how supplied.
13. Time allowed for absent parties.
14. Removal of petitions to S. J. C.
15. Guardian for infant, &c.
16. Pleadings.
17. Replication by petitioner, &c.
18. Proceedings thereon.
19. Costs of trial of an issue.
20. Interlocutory judgment.
21. Commissioners to make partition;
22. to be sworn;
23. to give notice to all parties.
24. Acts of majority valid.
25. If several petitioners.
26. When money may be awarded to equalize partition.
27. Liability of occupant to co-tenants in such case.
28. Remedy of co-tenants for trespass by stranger.
29. Return of commissioners, and judgment.
30. Appeal on petition for partition;
31. on writ of partition.
32. Final judgment.
33. Absent part owner may apply for a new partition.
34. New partition, how to be made.
35. Case of a stranger claiming in severalty;
- 36, 37. claiming one of the shares, &c.
- 38, 39. of two respondents claiming the same share.
40. Stranger claiming an additional share.
41. Case of a share left for part owner dead;
42. of a party evicted of his share.
43. Mortgagee, &c., bound by partition.
44. Costs, by whom paid.
45. When petitioner may recover costs.

## SECTION

46. Defendant, &c., entitled to betterments, &c.
47. Petitioner to pay for betterments before judgment.

## IN THE PROBATE COURT.

48. Partition by probate court.
49. Commissioners appointed, sworn, &c.
50. Partition of lands in different counties.
51. Proceedings in probate court.
52. Agents to act for absent heirs, &c.
53. Guardian for minor, &c.
54. Partition to be made of the whole, &c.
55. Share assigned to each owner, unless, &c.
56. When money may be awarded to equalize partition.
57. Preference of males, &c.
58. Whole or part set off to one party, and money paid.
59. Costs to be paid by all parties.
60. No partition in probate court when shares are disputable.
61. Estate of deceased to be severed.
62. Notice to be given to co-tenants.
63. If absent, proceedings to be stayed.
64. On whom partition is binding.
65. On whom it is not conclusive.

## ADVANCEMENTS.

66. Questions of advancement, how determined.

## GENERAL PROVISIONS.

67. Leases not to prevent or invalidate partitions.
68. Party being guardian, &c., of co-tenant, not to prevent, &c.
69. Case of remainders, &c., to persons not in being at time of application for partition.
70. Jurisdiction of the courts.
71. Money awarded to be paid before partition established.
72. Improvements after partition, compensation for;
73. party holding under partition entitled to

[E]

## IN COURT

SECTION 1. Persons holding tenants in common, may be co of partition at the common chapter.

18 Met. 462, 465. 6 Cush. 472.

SECT. 2. One or more of the petition to the superior court, for the county in which the said courts may cause partition the petitioners to be set off

109 1/2 5/3  
Partition, how made;  
R. S. 103, § 1.  
7 Mass. 475.  
14 Mass. 434.  
5 Met. 1.  
10 Met. 419.

upon petition by one or more.  
R. S. 103, § 2.  
1842, 14, § 1.  
1850, 196.  
7 Mass. 506.  
18 Met. 465.



premises shall remain for the person or persons entitled thereto, and if more than one person is so entitled, subject to a future partition.

SECT. 3. Such petition, except as provided in section sixty-seven, may be maintained by any person who has an estate in possession, but not by one who has only a remainder or reversion.

6 Cush. 472.  
3 Gray, 111.

Petition by one who has an estate in possession;  
R. S. 103, § 3.

1863, 410, § 1.

5 Met. 6.

7 Allen, 196.

10 9th. 181

SECT. 4. No tenant for a term of years, unless at least twenty years thereof remain unexpired, shall maintain such petition against a tenant of the freehold; but when two or more persons hold jointly or in common as tenants for a term of years, either of them may have his share set off and divided from the others.

by a tenant for years, in what cases.  
R. S. 103, § 4.  
15 Mass. 156.  
5 Met. 6.

SECT. 5. Such partition between tenants for years shall continue in force only so long as their estates endure, and shall not affect the premises when they revert to the respective landlords or reversioners.

Duration of the partition.  
R. S. 103, § 5.

SECT. 6. The petition shall set forth the rights and titles, so far as known to the petitioner, of all persons interested in the premises who would be bound by the partition, whether they have an estate of inheritance, for life or years, in possession, remainder, or reversion, and whether vested or contingent; and if the petitioner holds an estate for life or years, the person entitled to the remainder or reversion shall be considered one of the persons so interested, and entitled to notice.

Substance of the petition.  
R. S. 103, § 6.  
9 Allen, 260.

SECT. 7. Every petition for partition filed originally either in the supreme judicial court, or superior court, shall be indorsed in the same manner as is prescribed with respect to original writs, and all regulations concerning the indorsement of original writs shall apply in like manner to the indorsement of such petitions.

Petition to be indorsed.  
R. S. 103, § 7.  
1856, 449.  
See Ch. 123, § 20.  
Ch. 123, §§ 23-33.

SECT. 8. The petition may be filed in vacation or term time in the office of the clerk of the court in which the suit is brought; and a summons to appear and answer thereto shall be signed by the clerk, and served upon each of the parties named in the petition as interested in the premises, if found in this state, by delivering to him or leaving at the place of his abode a copy of the petition and of the summons, attested by the clerk or officer who serves the process, fourteen days at least before the sitting of the court to which he intends to present the same.

Filing and notice thereof.  
R. S. 103, § 7.

SECT. 9. The petitioner may fourteen days at least before the sitting of the court to which he intends to present his petition, without filing the same in the clerk's office, cause the parties interested to be served with a copy thereof attested by the officer, by delivering or leaving the same in the manner aforesaid fourteen days at least before the sitting of the court to which he intends to present it.

Notice, how to be served;  
R. S. 103, § 8.

SECT. 10. If any of the persons so named are absent from the state, or if there are any persons interested in the premises who would be bound by the partition and whose names are unknown to the petitioner, the court shall order notice to be given to all such persons by a publication of the petition or substance thereof, with the order of the court thereon, in one or more newspapers, to be designated in the order, or by delivering to any absent party who is known an attested copy of the petition and order, or in such other manner as the court considers most proper and effectual.

to persons absent or unknown.  
R. S. 103, § 9.

SECT. 11. The petition in the case last mentioned may be presented to the court when sitting in any county, without being previously filed in the clerk's office; but the cause shall be heard and determined by the court when held within or for the county in which the lands lie, and the summons or notice shall be made returnable to that court.

Proceedings in such case.  
R. S. 103, § 10.  
4 Mass. 122.

SECT. 12. If any person entitled to notice fails to appear, and if the service of the summons, or other notice to him, appears to the court to be in any way defective or insufficient, the court may order such further notice as it may deem proper.

Defects in service, how supplied.  
R. S. 103, § 11.

SECT. 13. If in any stage of the proceedings it appears to the court

Time allowed for



or the part thereof so incapable of division, may be set off to any one of the parties who will accept it, he paying to any one or more of the others such sums of money as the commissioners award to make the partition just and equal; or the commissioners may assign the exclusive occupancy and enjoyment of the whole, or the part, to each of the parties alternately for certain specified times, in proportion to their respective interests.

R. S. 108, §§ 25, 26.  
5 N. H. R. 134.  
7 Pick. 209.  
13 Pick. 237.  
11 Gray, 490.  
98 Mass. 281.  
See 1871, 111.

SECT. 27. When the whole or any specific part of the premises is thus assigned, the person entitled for the time being to the exclusive occupancy shall be liable to his co-tenants for any injury to the premises occasioned by his misconduct, as a tenant for years under a common lease without express covenants would be liable to his landlord; and the other tenants in common may have their remedy therefor against him by an action of tort, jointly or severally, at their election.

Liability of occupant to co-tenants in such case.  
R. S. 108, § 27.  
1852, 312.

SECT. 28. While an estate is in the exclusive occupancy of a co-tenant under such an assignment, he shall be entitled to the same remedy against whoever trespasses upon or otherwise injures the premises, as if he held the same under a lease for the term for which they were so assigned to him; and he and all the other tenants in common shall be entitled to recover such other and further damages as they have sustained by the same trespass or injury, in like manner as if the premises had been leased by them. Joint damages recovered by such tenants in common by force of this or the preceding section, shall be apportioned and divided among them according to their respective rights, by the court in which the judgment is recovered.

Remedy of co-tenants for trespass by stranger.  
R. S. 108, § 28.

SECT. 29. The commissioners shall make a return of their doings under their hands, together with their warrant. If their report is confirmed, judgment shall be rendered that the partition be firm and effectual forever.

Return of commissioners, and judgment.  
R. S. 108, § 29.  
See § 75.

SECT. 30. Any party aggrieved by any judgment rendered in the superior court under section twenty, or upon a report of commissioners under this chapter, may appeal therefrom in any matter of law apparent upon the record, to the supreme judicial court; but upon an appeal from the judgment upon the report of commissioners, the interlocutory judgment awarding that partition be made shall not be drawn in question.

Appeal on petition for partition;  
R. S. 108, §§ 19, 21.  
1840, 87, §§ 4, 5.  
13 Mass. 211.  
1859, 196.  
18 Gray, 268.

SECT. 31. The regulations herein prescribed as to appeals from the first and second judgment on a petition for partition, shall be enforced in like manner, in a writ of partition.

on writ of partition.  
R. S. 108, § 32.

SECT. 32. The final judgment shall, except as hereinafter provided, be conclusive as to the rights of property and possession of parties and privies to the judgment, including all persons who might by law have appeared and answered. 5 Met. 340. 8 Met. 590. 2 Allen, 122. 8 Allen, 421.

Final judgment.  
R. S. 108, § 38.  
2 Mass. 472.  
13 Mass. 213.  
22 Pick. 316.

SECT. 33. If any person who was a part owner with the petitioner, and for whom a share is left upon the partition, is out of the state when the summons or notice to him is served, and does not return in time to appear and answer, he may, within three years after the final judgment, apply to the same court for a new partition; and if, upon a hearing of all parties interested, it appears that the share left for the applicant was less than he was entitled to, or that the part left for him was not at the time equal in value to his share of the premises, the court may order a new partition, which shall be made in the manner before provided.

Absent part owner may apply for a new partition.  
R. S. 108, §§ 34, 35.

SECT. 34. In such new partition the commissioners shall not be required to make a new division of the whole premises, but may take from any one share or shares and add to any other or others so much as is necessary to make the partition just and equal, estimating the whole as in the state in which it was when first divided; or if an equal partition cannot be made without inconvenience to the owners, the com-

New partition, how to be made.  
R. S. 108, § 36.

missioners may award money to be paid by one party to another as before provided, to equalize the shares.

Case of stranger  
claiming in sever-  
alty;  
R. S. 103, § 38.  
2 Mass. 402.  
5 Met. 340.  
8 Met. 599.

SECT. 35. If any person who has not appeared and answered to the petition claims to hold in severalty any part of the premises, he shall not be concluded by the judgment, but may bring his action for the land claimed by him, against any or all of the petitioners or respondents, or of the persons holding under them, within the time in which he might have brought it if no such judgment for partition had been rendered.

of stranger  
claiming one of  
the shares, &c.;  
R. S. 103, § 39.  
8 Met. 599.

SECT. 36. When a person who has not appeared and answered claims the share assigned to or left for any of the supposed part owners in the judgment for partition, he shall be concluded by the judgment, so far as it respects the partition and the assignment of the shares, in like manner as if he had been a party to that suit, but may bring his action for the share claimed by him, against the person to whom it was assigned or for whom it was left.

same subject;  
R. S. 103, § 40.

SECT. 37. The action shall be brought against the tenant in possession as if the demandant had originally claimed the specific piece demanded instead of an undivided part of the land; and it may be brought within the time in which it might have been brought if no such judgment for partition had been rendered.

of two respond-  
ents claiming the  
same share;  
R. S. 103, § 41.

SECT. 38. If two or more persons appear as respondents, claiming the same share of the premises to be divided, it shall not be necessary to decide on their respective claims, except for the purpose of determining which shall be admitted to appear in the suit; and if partition is made, the share so claimed shall be left for whichever of the parties proves to be entitled to it, in a suit to be thereafter brought between themselves.

same subject;  
R. S. 103, § 42.

SECT. 39. If in such case it is decided in the suit for partition that either of the respondents is not entitled to the share that he claims, he shall be concluded by the judgment, so far as it respects the partition and assignment of the shares; but no other claimant in the manner provided.

of stranger  
claiming an ad-  
ditional share;  
R. S. 103, §§ 43,  
44.  
22 Pick. 316.

SECT. 40. If any person who has no part of the premises as a part owner w to the suit, and if the part or share so allowed and left for him, in the proceeding by the judgment, so far as it bring an action for the share or proportion of the persons holding any part of the partition, and if he prevails, shall receive portion or share of the part held by him out of the whole premises before the partition.

of a share left  
for part owner,  
who is dead;  
R. S. 103, § 45.

SECT. 41. If after partition it appears that a share was left or assigned, had died before the partition, he shall not, by reason of his having been evicted, be precluded from claiming the share that belonged to him, and the rights and remedies as if he had not been evicted, and notice of the pendency thereof.

of a party  
evicted of his  
share.  
R. S. 103, § 46.

SECT. 42. If a person to or for whom a share was left, is evicted by a person who at the time of the partition had a title older and better than the title of the person so evicted, in the suit, the person so evicted may have his share, if partition had not been made.

Mortgages, &c.,  
bound by parti-  
tion.  
R. S. 103, § 47.  
8 Allen, 189.

SECT. 43. A person having a mortgage on the share of a part owner, shall be bound by the partition, so far as it respects the partition and the mortgage, and the lien shall remain in full force upon the share of the part owner.

SECT. 44. The expenses and charges of the commissioners shall be ascertained and allowed by the court; the other costs shall be taxed in the usual manner; and the whole shall be paid by the petitioner, except the costs of a trial of issues. When there is more than one petitioner the whole costs and charges payable by them shall be paid in proportion to the shares or interests they respectively hold in the premises.

Costs, by whom paid.  
R. S. 103, § 49.  
5 Allen, 86.  
11 Allen, 104.

SECT. 45. When a petition is opposed by any respondent therein named, and it appears that the petitioner is entitled to have partition as prayed for, he shall recover costs against the party opposing, from and after the filing of the plea or answer, to be taxed as in other civil cases.

When petitioner may recover costs.  
1867, 149.

SECT. 46. If the plaintiff or petitioner recovers judgment in any writ or other process of partition in which it appears by the pleadings that the defendant or respondent denies the right and title of the plaintiff or petitioner to any part of the premises, and claims the same as his own estate in fee, and it is proved that the defendant or respondent held the same under a title which he believed to be good, he shall be entitled to compensation for the value of any buildings or improvements on the premises made or erected by himself or any other person under whom he claims; such value to be ascertained as provided for tenants in real actions, by chapter one hundred and thirty-four; and in like manner he shall be liable for the plaintiff or petitioner's share of the rents, profits, and other damages, mentioned in said chapter.

Defendant, &c., entitled to betterments, &c.  
1860, 278, § 1.  
13 Met. 462.  
12 Cush. 170.  
11 Allen, 104.  
106 Mass. 412.

SECT. 47. If any sum remains due to the defendant or respondent for improvements, after deducting the rents, profits, or other damages, for which he is found chargeable, the plaintiff or petitioner shall not have judgment for partition until he pays the same to the defendant or respondent, or for his use to the clerk of the court; and he shall not be entitled to any rents or profits which may accrue after verdict, and before he makes such payment.

Petitioner to pay for betterments before judgment.  
1860, 278, § 2.

#### IN THE PROBATE COURT.

[See 1869, 121.] 1874, 266

SECT. 48. The probate court in which the estate of any deceased person is settled or in a course of settlement, may make partition of all his real estate lying within the state, among his heirs or devisees, and all persons holding under them by conveyance or otherwise, in the manner and under the restrictions hereinafter provided.

Partition by probate court.  
R. S. 103, § 50.  
13 Mass. 413.  
6 Pick. 210.  
21 Pick. 101.  
10 Allen, 585.  
11 Allen, 28.

SECT. 49. The partition shall be made by three or five disinterested persons to be appointed as commissioners for that purpose by the court. They shall before proceeding to the execution of their duties be sworn faithfully and impartially to execute the same, and shall proceed therein in the manner before prescribed with regard to commissioners appointed by the courts of law, except as hereinafter otherwise provided.

Commissioners appointed, sworn, &c.  
R. S. 103, § 51.

SECT. 50. If an estate to be divided lies in different counties, the judge may if he thinks fit issue a separate warrant and appoint different commissioners for each county; and the partition shall be made of the estate in each county in like manner as if there were no other estate.

Partition of lands in different counties.  
R. S. 103, § 52.

SECT. 51. Such partition may be ordered on the petition of any of said parties interested, after due notice to all the others to appear and show cause against it. The notice shall be served fourteen days at least before the time appointed for the hearing, on the parties personally if they can be found within the state, and if not, it shall be published once in each week for three weeks at least before such hearing, in such newspapers as the court shall order.

Proceedings in probate court.  
R. S. 103, § 53.  
7 Pick. 209.  
See 1869, 121, § 2.

SECT. 52. After the commissioners are appointed, some disinterested person shall be appointed agent by the court for any heir at law or devisee absent from the state; and he shall act for such absent heir or devisee in all things relating to the partition.

Agents to act for absent heirs, &c.  
1869, 164, § 1.

Guardian for minor, &c.  
R. S. 103, § 54  
See Ch. 109, § 20.

SECT. 53. If it appears that in the premises, and has no assign him a guardian for the interests therein.

Partition to be made of the whole, &c.  
R. S. 103, § 55.

SECT. 54. The partition shall be made of all the estate which any party interested, or have included in the partition; devisee, it shall be made of it or in common with others who other devisee requires to have when the application is made by the devisee.

Share assigned to each owner, unless, &c.  
R. S. 103, § 56.

SECT. 55. Upon every such partition and set off to the applicant his share of the residue to be divided among the owners, one to be assigned to him, or he may hold their shares together and divide them.

When money may be awarded to equalize partition  
R. S. 103, § 57.  
7 Pick. 209.

SECT. 56. When a messuage or premises, is of greater value than the sum of the shares of any one of the parties who wish to have the partition, any one of the parties who wish of the others such sums of money as will make the partition just and equal.

Preference of males, &c.  
R. S. 103, § 58.

SECT. 57. In the assignment of the residue, males shall have preference of the children of the deceased, eldest first.

Whole or part set off to one party, and money paid.  
1838, 29.  
8 Met. 365.  
11 Gray, 490.

SECT. 58. When such real estate is set off to the owners, the whole or more of the parties among whom it is to be divided, they paying to the other parties their shares shall award.

Costs to be paid by all parties  
R. S. 103, § 60.  
11 Allen, 191, 192.

SECT. 59. The expenses of the partition and allowed by the court, as to the partition in proportion to the value of the premises. If any one neglect to pay his share, a writ may be issued against him.

No partition in probate court when shares are disputable.  
R. S. 103, § 61.  
7 Allen, 192.  
8 Allen, 575.  
9 Allen, 239, 242.  
11 Allen, 187.

SECT. 60. No partition shall be made of the shares or proportions of the estate, or appear to the judge of probate, or effect of any decision, or questions that he deems proper to be decided by the court of common law.

Estate of deceased to be severed  
R. S. 103, § 64.

SECT. 61. When any part of the estate is common and undivided with others, it may cause it to be divided by the court, before making partition under the deceased.

Notice to be given to co-tenants  
R. S. 103, § 65.  
See 1869, 121, § 2.

SECT. 62. The court in such partition to be given to the parties, the premises to be divided, with the place claimed as belonging to the estate, and the place appointed for hearing the partition by delivering to him a writ at the place of his abode in the time appointed for the hearing.

If absent, proceedings to be stayed  
R. S. 103, § 66.

SECT. 63. If it appears in the partition that any person interested in the premises of the deceased and those claiming

when the notice was served, and has not returned, the probate court shall either dismiss the application for partition, or stay all further proceedings until such absent party appears and answers thereto, or signifies in writing to the court his consent that partition be made as proposed. -

SECT. 64. The partition when finally confirmed and established shall be conclusive on all the heirs and devisees of the deceased, and all persons claiming under them; on all other persons interested in the premises who appeared and answered in the case, or assented to the proposed partition as before provided, and on every person so interested, on whom notice was served by delivering to him a copy thereof, or by leaving it at the place of his abode at a time when he was within the state.

On whom partition is binding; R. S. 103, § 68. 11 Allen, 28. 12 Allen, 600.

SECT. 65. Such partition shall not be conclusive upon any persons other than those mentioned in the preceding section. All other persons may pursue their legal remedies for recovering the premises, or any part thereof, and also for obtaining partition of the same, in like manner as if the proceedings in the probate court had not been had.

on whom it is not conclusive. R. S. 103, § 69.

#### ADVANCEMENTS.

SECT. 66. Questions concerning advancements of either party may be heard and determined upon a petition for partition, or the court may suspend proceedings until that question is decided in the probate court in which the estate of the deceased is settled; which court may hear and determine all such questions, saving an appeal as in other cases to the supreme judicial court. The final decree or sentence thereon shall be binding on all parties interested, whether the partition is made by the probate court or in the courts of common law.

Questions of advancement, how determined. R. S. 103, §§ 62, 63. 16 Mass. 200. See Ch. 91, § 6. 102 Mass. 357.

#### GENERAL PROVISIONS.

SECT. 67. Partitions may be made under this chapter notwithstanding the existence of any lease of the whole or a part of the estate to be divided; and no partition heretofore made by a court of competent jurisdiction, shall be rendered invalid by reason of the existence of such lease: *provided*, that such partition shall not prejudice the right of a lessee.

Leases not to prevent or invalidate partitions. 1853, 410, § 1. 6 Cush. 472.

SECT. 68. Such partitions may be made notwithstanding any of the tenants in common may be, alone or jointly with others, trustee, attorney, or guardian, of any other tenant; and no partitions of real estate heretofore made by a court of competent jurisdiction, shall be rendered invalid by reason that such trustee, attorney, or guardian, was a party.

Party being guardian, &c., of co-tenant, not to prevent, &c. 1853, 410, § 2. 9 Cush. 405.

SECT. 69. The provisions of this chapter shall apply to cases in which remainders or estates are devised or limited to, or in trust for, persons not in being at the time of application for partition, upon notice to the persons who may be parents of such persons, in the manner herein prescribed, setting forth the origin and nature of the remainder or interest so devised or limited. The court in such case shall appoint a suitable and competent person to appear and act as the next friend of such persons, in all proceedings touching the partition; the cost of whose appearance and services, including compensation of counsel, to be determined by the court, shall be paid by the persons applying for partition, and execution may be issued therefor in the name of the person appointed. The partition made in such case shall be conclusive upon all persons to whom such estate or remainder is devised or limited, in the same manner as if they had been in being and appeared and answered in the case, or assented to the partition.

Case of remainders, &c., to persons not in being. 1850, 249. 1853, 257. 1858, 137.

SECT. 70. When proceedings for obtaining partition are lawfully

Jurisdiction of the courts.

R. S. 103, § 72.  
16 Mass. 167.  
11 Allen, 187.

Money awarded  
to be paid before  
partition estab-  
lished  
1850, 280.  
7 Pick. 208.  
8 Gray, 636.

Compensation for  
improvements  
after partition;  
R. S. 103, §§ 37,  
70.

party holding  
under partition  
entitled to.  
R. S. 103, § 71.

Return may be  
set aside.  
R. S. 103, §§ 30,  
69.  
6 N. H. R. 329.  
11 Allen, 187.

Returns of parti-  
tions, &c., to  
remain in office  
of clerk, &c.  
1847, 170, § 1.

Registry here-  
before made to  
be valid.  
1847, 170, § 2.

Division of water  
rights.  
1854, 74.  
4 Gray, 436.

of water of  
natural stream.  
1860, 128.

commenced in either of the courts shall retain jurisdiction of the case cases where an appeal is allowed by

SECT. 71. Where sums of money to make the partition just and equal, by the court until all such sums are or secured to their satisfaction, or matter is pending.

SECT. 72. If after a first parti-  
ments have been made on any par-  
partition is taken from the share of  
ments, he shall be entitled to com-  
and awarded by the commissioners,  
part of the premises is assigned on to  
issue an execution therefor in the court

SECT. 73. Every person holding  
this chapter, shall in case of an eviction  
improvements made thereon, in the  
hundred and thirty-four.

SECT. 74. In all cases of parti-  
reason set aside the return and com-  
other commissioners, whereupon the  
are before directed.

SECT. 75. The return of the ex-  
remain in the office of the clerk of  
bate, as the case may be; and a copy  
register, shall be recorded in the reg-  
istry where the land lies.

SECT. 76. All records in the re-  
fore made, if no other objection ex-  
and sufficient whether recorded from  
thereof certified by the clerk or regi-  
stration was made.

#### DIVISION OF WATER

SECT. 77. All persons who are in  
common, or otherwise, in any mill or  
poreal hereditament, may be compelled  
in equity, in the supreme judicial court,  
provided for the division of land. The  
appointed to make partition shall  
method of setting off to the several  
interests, and thereupon the court may  
perform such acts as justice and equity  
such orders and decrees in the pre-  
ceedings in equity, as may be necessary  
parties.

SECT. 78. Under the provisions  
may be made of the water of a natu-  
ral stream of which are owned by different riparian

[DIVISION OF

See 187



## CHAPTER 137.

## OF FORCIBLE ENTRY AND DETAINER.

## Section

1. Forcible entry forbidden.
2. Person ousted, &c., may be restored.
3. On termination of lease by reason of non-payment of rent, lessor, &c., restored.
4. Suit to be commenced within three years.
5. Form of writ.
6. Proceedings in the suit.

## Section

7. Judgment, when for plaintiff;
8. when for defendant.
9. Upon appeal or removal, defendant to recognize, &c.
10. Liability of defendant for frivolous plea.
11. The premises or further damages may be afterwards recovered.

SECTION 1. No person shall make an entry into lands or tenements, except in cases where his entry is allowed by law; and in such cases he shall not enter with force, but in a peaceable manner. 5 Cush. 214. 8 Cush. 32.

SECT. 2. When a forcible entry is made, or when a peaceable entry is made and the possession unlawfully held by force, or when the lessee of land or tenements, or a person holding under such lessee, holds possession without right after the determination of the lease by its own limitation, or by notice to quit or otherwise, the person entitled to the premises may be restored to the possession in the manner hereinafter provided.

13 Met. 273.  
1 Cus-h. 497.  
5 Cush. 563.  
8 Cush. 29, 33,  
121, 499.  
11 Cush. 227.

1 Gray, 571.  
4 Gray, 432.  
See Ch. 87, § 8.  
Ch. 90, § 31.  
12 Cus-h. 174, 323.  
9 Gray, 438.

11 Gray, 181, 480.  
13 Gray, 272.  
15 Gray, 316, 319.  
6 Allen, 74.  
10 Allen, 519.  
13 Allen, 82, 281.

97 Mass. 206.  
98 Mass. 309, 508.  
99 Mass. 11, 13,  
14, 229, 241.  
100 Mass. 187,  
353, 446.

101 Mass. 68, 66.  
102 Mass. 372, 11.  
103 Mass. 875,  
381, 547.  
104 Mass. 595.  
105 Mass. 488.

SECT. 3. When a lease in writing is determined in the manner provided in section thirty of chapter ninety, the lessor and his assigns may be restored to the possession of the premises in like manner: *provided*, that when a suit is brought under this chapter to recover the possession by reason of such termination, if the tenant four days at least before the return day of the writ pays or tenders to the landlord or his attorney the rent due, with interest thereon and all costs of suit, the lease shall be in force. Nothing contained in this section or said section [thirty] [twenty-eight] shall affect any other rights or remedies on the part of the lessor provided in the lease.

SECT. 4. No restitution shall be made under the provisions of this chapter of any lands or tenements of which the defendant, or his ancestors, or those under whom he holds the premises, have been in the quiet possession for three years next before the commencement of the suit, unless his estate therein is ended.

SECT. 5. The person entitled to the possession of the premises may take from a justice of the peace, or police court, a writ in the form used for an original summons in common civil actions before such justices or courts, in which the defendant shall be summoned to answer to the complaint of the plaintiff, for that the defendant is in possession of the lands or tenements in question, describing them, which he holds unlawfully and against the right of the plaintiff, as it is said; and no other declaration shall be required.

SECT. 6. The writ shall be served seven days at least before the return day, and the suit shall be conducted like other civil actions before such justices or courts.

SECT. 7. If it appears by default or on trial that the plaintiff is entitled to the possession of the premises, he shall have judgment and execution for the possession and for his costs.

SECT. 8. If the plaintiff becomes nonsuit, or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs.

*Not a piece of  
foreman  
113 m. 36*

Forcible entry  
forbidden.  
R. S. 104, § 1.  
7 Met. 161.

Person ousted,  
how restored.  
R. S. 104, § 2.  
10 Mass. 408.  
3 Pick. 31.  
2 Met. 29.  
8 Met. 350.  
5 Met. 343.  
10 Met. 230, 298.  
11 Met. 59.  
12 Met. 300.

*117 m. 153, 266*

On termination  
of lease by rea-  
son of non-pay-  
ment of rent,  
lessor, &c., re-  
stored, &c.  
Proviso.  
1847, 267, § 2.  
1857 56  
6 Gray, 227.  
13 Allen, 70.

*110 m. 40*

Suit to be com-  
menced within  
three years.  
R. S. 104, § 3.  
R. S. Act of  
amend. § 14.  
12 Gray, 206.

Form of writ.  
R. S. 104, §§ 4, 13.  
1841, 56, § 2.  
2 Met. 29.  
3 Met. 350, 548.  
10 Met. 223, 230,  
294, 298.  
13 Met. 186.  
1 Cus-h. 487.  
5 Cus-h. 563.  
6 Cus-h. 415.  
8 Cus-h. 32, 121,  
124.

Proceedings in  
the suit.  
R. S. 104, § 5.

Judgment, when  
for plaintiff.  
R. S. 104, § 6.

when for de-  
fendant.  
R. S. 104, § 7.  
10 Met. 281.



by a jury in the usual manner, either with or without a view of the premises, as the court shall order; and the jury that inquire of the waste shall assess the damages.

SECT. 4. A person entitled to such action of waste may instead thereof bring an action of tort in the nature of waste, in which he shall recover such damages as he has suffered by reason of the waste.

Action of tort for waste; R. S. 105, § 4. 1852, 312. 10 Allen, 460. by whom brought; R. S. 105, § 5. 1852, 312. 8 Pick. 208.

SECT. 5. Such action of tort may be maintained by one who has the remainder or reversion in fee simple or fee tail, after an intervening estate for life, and also by one who has a remainder or reversion for life or years only, and each shall recover such damages as he has suffered by the waste.

SECT. 6. An action of tort for waste, if commenced in the lifetime of the tenant, may be prosecuted against his executors or administrators; and such action may be originally brought against the executors or administrators of the tenant, for waste committed or suffered in his lifetime.

may be prosecuted or brought against executors, &c. R. S. 105, § 6. 1852, 312.

SECT. 7. If a joint tenant, coparcener, or tenant in common, of undivided lands, cuts down, destroys, or carries away, any trees, timber, wood, or underwood, standing or lying on such lands, or digs up or carries away any stone, ore, or other valuable thing, found there, or commits any other strip or waste, without first giving thirty days' notice in writing under his hand to all the other persons interested therein, or to their respective agents or attorneys, of his intention to enter upon and improve the land; or if he does any of said acts during the pendency of a petition or other suit for the partition of the premises; he shall forfeit three times the amount of the damages that shall be assessed therefor, to be recovered and appropriated as provided in the following section.

Penalty for waste on lands held in joint tenancy, &c. R. S. 105, § 7. 22 Pick. 496. 1 Met. 206.

SECT. 8. Such damages may be recovered in an action of tort by any one or more of the other co-tenants, without naming any one except the plaintiff, and the damages shall be appropriated, one-half to the persons who shall sue, and the other half to the same persons with all the other co-tenants except the defendant, to be divided among them in proportion to their respective interests in the land.

Damages, how recovered and appropriated R. S. 105, § 8. 1852, 312. 22 Pick. 496. 6 Gray, 389.

SECT. 9. If, during the pendency of an action for the recovery of lands, the tenant or person in possession, with knowledge of such pendency, commits strip or waste, the demandant, if he recovers judgment, may afterwards recover, in an action of tort, three times the amount of the damages that shall be assessed therefor.

Penalty for waste after action for possession. R. S. 105, § 9. 1852, 312. 8 Pick 514. 2 Cush. 401.

SECT. 10. If any person without license wilfully cuts down, carries away, girdles, or otherwise destroys, any trees, timber, wood, or underwood, on the land of another, the owner may recover, in an action of tort, three times the amount of the damages that shall be assessed therefor, unless it appears that the defendant had good reason to believe that the land on which the trespass was committed was his own, or that he was otherwise lawfully authorized to do the acts complained of, in which case he shall be liable only for single damages.

Penalty for wilful trespass on lands. R. S. 105, §§ 10, 11. 1852, 312. 110 *Ms.* 280

SECT. 11. When a trespass on lands has been casual and involuntary, the trespasser may tender sufficient amends before an action is brought; and if afterwards sued, he may in his answer disclaim all title to the land, allege that the trespass was casual and involuntary, and set forth the tender, bringing the money into court. If upon the trial the allegations appear to be true, and the damages assessed do not exceed the amount so tendered, the defendant shall recover his costs.

Tender allowed in case of involuntary trespass. R. S. 105, § 12. 1852, 312.

SECT. 12. If a tender was not made before the commencement of the action, the defendant may disclaim title, allege that the trespass was casual and involuntary, and bring into court sufficient amends, with the costs of suit up to that time. If the plaintiff does not accept the same in satisfaction, and if upon trial the allegations appear to be true, and

Or money may be brought into court. R. S. 105, § 13. 1852, 312.

Injunction to  
stay waste;  
R. S. 106, § 16.

how dissolved.  
R. S. 106, § 16.

Injunction for  
waste in case of  
land attached,  
or action for  
possession, &c.  
R. S. 106, § 17.  
1862, 312, § 54.  
1869, 278.

Applicant to  
give bond.  
1868, 278.

Further pro-  
ceedings in  
such case.  
R. S. 106, § 18.

the damages assessed do not exceed the amount so brought into court, the defendant shall recover his costs.

SECT. 13. The supreme judicial court, or one of the justices thereof, may either in term time or vacation, after the filing of the bill or other commencement of a suit concerning waste, issue a writ of injunction to stay waste, and issue such other writs and processes, and make such orders and decrees, according to the course of proceedings in equity, as justice and equity may require.

SECT. 14. Every such injunction to stay waste may be dissolved, either in term time or vacation, by the supreme judicial court, or any one of the justices thereof.

SECT. 15. When a person whose real estate is attached commits waste thereon, or threatens or makes preparations so to do, or when a real action is brought to foreclose a mortgage, or for possession under the same, or for the recovery of land, and any waste on the land has been committed or threatened by the defendant, or any one claiming under him or acting by his permission, the court in which the suit is pending or any one of the justices may on the application of the plaintiff, either in term time or vacation, issue a writ of injunction to stay such waste.

SECT. 16. In any case under the preceding section, the court or justice may require that the applicant shall before the issuing of the writ give bond with sufficient sureties to the adverse party, conditioned that the applicant shall pay all damages which may arise from the issuing of the injunction if it is dissolved.

SECT. 17. The court may arrest and commit the defendant for a violation of such injunction, and issue such other process as may be necessary or proper to enforce obedience thereto, in like manner as the supreme judicial court may do upon a suit in equity pending before them; and the injunction may be dissolved, either in term time or vacation, by the court in which the suit is pending, or by any one of the justices.

## CHAPTER 139. •

### OF ACTIONS FOR PRIVATE NUISANCES.

#### Section

1. Judgment for abatement of nuisance. Warrant therefor;
2. may be postponed;
3. when demandable of right;
4. expenses of executing.

#### Section

Judgment for  
abatement of  
nuisance.  
Warrant  
therefor;  
R. S. 106, §§ 1, 2.  
1852, 312.  
11 Pick 452.  
7 Allen, 438.

may be post-  
poned;  
R. S. 106, § 3.

when de-  
mandable of  
right  
R. S. 106, § 4.  
12 Cush. 128.

SECTION 1. When the plaintiff sues for a private nuisance, the court may, in addition to the damages and costs, enter judgment that the defendant do remove the nuisance, and award an execution in compliance with the judgment, and a separate warrant to the plaintiff to remove the nuisance, and remove the nuisance at the expense of the defendant, as public and common nuisance.

SECT. 2. The court may on the return of such warrant for a time not exceeding six months, adjourn the plaintiff to remove the nuisance, upon time ordered.

SECT. 3. If the plaintiff recover judgment for a private nuisance, and the nuisance be continued or repeated, the court may, on the first suit a judgment for abate

entitled as of right to a judgment for abatement and removal, and to a warrant to be issued as before provided.

SECT. 4. The expense of abatement and removal shall be collected by the officer in the manner damages and costs are collected upon execution; except that the materials of buildings, fences, or other things, removed as a nuisance, may be sold by the officer as goods are sold on execution for the payment of debts. The officer shall apply the proceeds of the sale to defray the expenses of the removal, and pay over any balance to the defendant upon demand. If the proceeds are not sufficient to defray the expenses, he shall collect the residue.

Expenses of executing warrant for abatement of nuisance.  
R. S. 106, § 5.

SECT. 5. After the commencement of a suit in equity concerning a nuisance, the supreme judicial court or any one of the justices, either in term time or vacation, may issue an injunction to stay or prevent any nuisance on the premises in question.

Injunction to prevent nuisance.  
R. S. 106, §§ 6, 7.

SECT. 6. When an action of tort for a nuisance is pending, either in the superior court or the supreme judicial court, an injunction may be issued and enforced by the same court or one of the justices, in the manner provided in the preceding section.

Same subject.  
R. S. 106, § 8.  
1852, 312.  
1859, 196.

SECT. 7. Every injunction issued as provided in the two preceding sections may be dissolved, either in term time or vacation, by the court by which it was issued or one of the justices.

Injunction, how dissolved.  
R. S. 106, § 9.

## CHAPTER 140.

### OF THE FORECLOSURE AND REDEMPTION OF MORTGAGES.

#### POSSESSION AND FORECLOSURE.

##### SECTION

1. Foreclosure by action or entry.
2. Certificate of entry to be recorded.
- 3, 4. Form of action and judgment.
- 5, 6. Form of conditional judgment.
7. Assignee of mortgagee may enter or sue.
8. Proceedings in such case.
9. Mortgagee may enter before breach, and hold subject to account.
- 10, 11. Mortgage, how foreclosed in such case.
12. Certificate of notice or new entry to be recorded.

#### REDEMPTION.

13. Mortgage, may be redeemed.
14. Party redeeming to pay, or tender debt, &c.
15. Account to be taken of rents, &c.
16. Tender, when to be made. Suit for redemption.
17. Suit to be brought within one year.
18. Plaintiff to pay into court sum tendered, &c.
19. Suit may be brought without previous tender.
20. In suits in equity, court may at any time order sum not in dispute to be paid.
21. Costs upon redemption.
22. Proceedings when tender is insufficient.
23. In what court suit to be brought.
24. Commencement of suit.
25. Decree for redemption.
26. Court to award balance due with interest at twelve per cent.
27. Plaintiff may have execution thereon.
28. Judgment, &c., for balance due from mortgagee.
29. If money tendered, &c., exceeds sum due, amount due to be deducted, &c.

##### SECTION

30. If mortgagee receives more than due, excess may be recovered back.
31. New parties may be brought in.
32. Executors, &c., may tender and redeem;
33. may bring suit upon tender by deceased.
34. Tender may be made to guardian.
35. Where execution for possession is satisfied, mortgagee, &c., to discharge.

#### OPENING OF FORECLOSURE.

36. Foreclosure to be opened, in case, &c.

#### MORTGAGES BY DEFEASANCE.

37. Conveyance with defeasance constitutes a mortgage.

#### MORTGAGES WITH POWER OF SALE.

38. When power of sale in mortgage deed, demandant may have decree of sale.
39. Sale by mortgagor not to impair rights of mortgagee.
40. Party selling to report to court. Sale confirmed. Persons interested may intervene.
41. Parties interested in equity of redemption to be summoned before decree.
42. Mortgagee, &c., may give notice and sell in pursuance of power, file copy of notice, and affidavit, in registry of deeds.
43. Affidavit or copy of record, evidence of due execution of power.
44. When sale under power shall bar dower.

#### MORTGAGES TO THE COMMONWEALTH.

45. Mortgages to the commonwealth.
46. Proceedings for foreclosure;
47. for redemption.
48. Suit in equity may be brought; service, judgment, &c.

## POSSESSION AND

Foreclosure by  
action or entry.

R. s. 107, § 1.  
7 Greenl 31.  
6 Pick 28.  
10 Met 172.  
11 Met 351, 568.  
2 Cush 31.  
6 Cush 51.  
10 C. h. 136.  
2 Gray, 413.  
5 Gray, 545.

Certificate of  
entry to be  
recorded.

R. s. 107, § 2.  
13 Mass. 309.  
17 Mass. 429.  
4 Pick 463.  
4 Met 498.  
10 Met 344.  
4 Cush 172.  
6 Cush 51.  
10 Cush 163.  
5 Gray, 318.  
7 Gray, 213.  
9 Gray, 98.  
8 Allen, 161.  
11 Allen, 39.

Form of action  
and judgment.

R. s. 107, § 3.  
1852, 812, § 2.  
2 Mass 406.  
13 Mass. 519.  
15 Mass. 487.  
16 Mass. 348.  
3 Met 341.  
8 Met 517.  
13 Met 300.  
11 Met 335.  
Same subject.  
R. s. 107, § 4.  
10 Met 174.  
13 Gray, 198.

Form of condi-  
tional judgment.

R. s. 107, § 5.  
7 Met 581.  
8 Met 517.  
11 Met 344.  
4 Gray, 110.  
5 Gray, 423.  
11 Gray, 30, 267,  
270.  
12 Gray, 60.  
4 Allen, 562.

## Same subject.

R. s. 107, § 6.  
11 Met 384.

Assignee of  
mortgagee may  
enter or sue.

R. s. 107, § 7.  
6 Gray, 423.

Proceedings in  
such case

R. s. 107, § 8.  
7 Pick 31.  
10 Met 174.  
12 Met 154.  
2 Cush 262.  
16 Gray, 486.

SECTION 1. After the breach of estate, the mortgagee may recover pises by action in the manner herein open and peaceable entry thereon, if other person claiming the premises either mode, continued peaceably for the right of redemption.

12 Gray, 206. 16 Gray, 140, 561. 3 All

SECT. 2. When an entry for brea a judgment, a memorandum or certi mortgage deed and signed by the under him, or a certificate of two entry shall be made and sworn to l the same shall within thirty days aft istry of deeds for the county or disti of reference from each record to the in the same registry. No such enty mentioned in the preceding section in proof thereof is thus made and re

12 Allen, 397. 100 Mass. 108.

SECT. 3. The mortgagee in an a his own seisin, stating that it is in r court, upon default, demurrer, verdic entitled to the possession of the pre the mortgage, the court shall, on mot tional judgment hereinafter mentioni ng section.

6 Cush. 170. 6 Gray, 128, 423. 8 Gray, 154, 198

SECT. 4. Unless the defendant i entitled to hold or claim the premis the premises, nor have a conditional consent of the plaintiff; but the sui like a writ of entry; and in all cases be entered for possession as at comu the parties moves for the conditiona

SECT. 5. When the conditional j shall inquire and determine how r mortgage, and shall then enter judg two months after the judgment, pay due on the mortgage, with interest gage shall be void and the defendant thereof; otherwise, that the plaintiff sion, and for costs of suit.

6 Allen, 71. 8 Allen, 78.

SECT. 6. If the condition of the thing other than the payment of mo money is due, the court shall vary th may require; but shall award exec defendant within two months afte therein prescribed.

SECT. 7. An entry for breach o an action for possession may be br gagee, whether the assignment is by the action shall be conducted in like nal mortgagee.

SECT. 8. The action may be br whoever is tenant of the freehold, a be joined as a defendant, whether he or not; but he shall not be liable fo makes no defence to the suit.

SECT. 9. Nothing contained in this chapter shall prevent a mortgagee or any person claiming under him from entering on the premises, or recovering possession thereof, before breach of the condition of the mortgage, when there is no agreement to the contrary; but, in such case, if the debt is afterwards paid, or the mortgage redeemed, the amount of the clear rents and profits from the time of the entry shall be accounted for, and deducted from the sum due on the mortgage.

Mortgagee may enter before breach, and hold subject to account.  
R. S. 107, § 9.  
3 Mass. 138.  
11 Met. 458.  
1 Gray, 612.

SECT. 10. If such entry is before a breach of the condition, the three years limited for the redemption shall not begin to run until after the condition is broken, nor until after a notice in writing given by the mortgagee or the person claiming under him, to the mortgagor or the person claiming under him, that the former will thenceforward hold the premises for the breach of the condition, or for the purpose of foreclosing the mortgage.

Mortgage, how foreclosed in such case.  
R. S. 107, § 10.  
2 Mass. 496.  
3 Mass. 175.  
12 Mass. 614.  
6 Cush. 91.  
9 Gray, 63.

SECT. 11. The person thus entitled to hold the premises for breach of the condition may instead of such notice in writing make a new formal entry for the breach of the condition, or may bring an action therefor in the manner herein before provided; and such action, if brought against the mortgagor or any person claiming under him, may be maintained notwithstanding the premises are at that time in the possession of the plaintiff.

Same subject.  
R. S. 107, § 11.  
13 Mass. 313.  
6 Cush. 91.

SECT. 12. Such notice of intention and such new entry shall not be effectual for the purposes aforesaid, unless a certificate or deposition to prove the same is made and recorded, as before provided in the case of an original entry for breach of the condition.

Certificate of notice or new entry to be recorded.  
R. S. 107, § 12.

## REDEMPTION.

SECT. 13. When the condition of a mortgage has been broken, the mortgagor or any person lawfully claiming or holding under him, may redeem the same unless the mortgagee, or some person lawfully holding or claiming under him, has obtained possession of the premises for the breach of the condition, and has continued that possession for three years.

11 Gray, 276, 478. 15 Gray, 525. 10 Allen, 32. 13 Allen, 60. 100 Mass. 271. See 1862, 179, § 7.

SECT. 14. The person entitled to redeem shall pay or tender to the mortgagee, or person lawfully claiming or holding under him, the whole sum then due and payable on the mortgage, and shall perform or tender performance of every other condition contained therein; and if there has been a suit for recovering the premises, he shall pay or tender the costs if unpaid.

Mortgage may be redeemed.  
R. S. 107, § 12.  
22 Pick. 401.  
5 Gray, 181.  
6 Gray, 128.  
7 Gray, 279.  
See Ch. 118, § 123.

Party redeeming to pay or tender debt, &c.  
R. S. 107, § 14.  
5 Met. 95.  
7 Cush. 220.  
2 Gray, 475.  
12 Gray, 102.

SECT. 15. If the mortgagee or any person under him has had possession of the premises, he shall account for the rents and profits, and shall be allowed for all sums expended in reasonable repairs and improvements, all sums paid for lawful taxes and assessments, and all other necessary expenses in the care and management of the premises. If on such account there is a balance due from him, it shall be considered as so much paid towards the debt due on the mortgage. If there is a balance due him, it shall be added to the debt, and be paid or tendered as such.

4 Allen, 538. 5 Allen, 78. 8 Allen, 339.

Account to be taken of rents, &c.  
R. S. 107, § 15.  
2 Pick. 545.  
5 Pick. 259, 270.  
9 Pick. 171.  
10 Pick. 308.  
4 Met. 49.  
2 Cush. 495.  
7 Cush. 220.  
5 Gray, 423.  
6 Gray, 550.

SECT. 16. The tender may be made at any time within the three years limited for redemption, before as well as after an entry for breach of the condition; and if the mortgagee, or person claiming or holding under him, does not accept the same and discharge the mortgage in the manner prescribed by law, the mortgagor, or person claiming or holding under him, may recover the premises by a suit in equity for redemption.

Tender, when to be made. Suit for redemption.  
R. S. 107, § 16.  
97 Mass. 469.

SECT. 17. The tender, if not accepted, shall not prevent the foreclosure of the right of redemption, unless a suit is commenced within one year after the tender is made.

97 Mass. 469.

Suit to be brought within one year.  
R. S. 107, § 17.

SECT. 18. If in such suit the plaintiff alleges that he had tendered

Plaintiff to pay

into court sum  
tendered, &c  
1857, 106, § 2.  
8 Allen, 368.

Suit may be  
brought without  
previous tender.  
R. S. 107, § 18.  
7 Met. 167.  
7 Cush. 220.  
7 Gray, 279.

In suits in equi-  
ty, court may at  
any time order  
sum not in dis-  
pute to be paid.  
1857, 106, § 1.

Costs upon re-  
demption.  
R. S. 107, § 19.  
10 Allen, 360.  
105 Mass. 608.  
16 Gray, 566.

Proceedings  
when tender is  
insufficient  
R. S. 107, § 20.

In what court  
suit to be  
brought.  
R. S. 107, § 21.  
1959, 194.  
See Ch. 114, § 10.

Commencement  
of suit  
1963, 212.  
7 Met. 157.  
See Ch. 114, § 8.  
9 Gray, 202.  
9 Allen, 578.  
14 Allen, 375.

Decree for re-  
demption.  
R. S. 107, § 22.  
7 Cush. 220.  
2 Gray, 475.  
1 Allen, 145.  
9 Allen, 69.

Court to award  
balance due, with  
interest at 12 per  
cent.  
1860, 21.

Plaintiff may  
have execution  
thereon.

or offered to pay the sum due or  
mences his suit pay the sum thu  
the use of the party entitled ther

SECT. 19. The person entitled  
three years limited for the rede  
entry for breach of the condition  
a previous tender, and may ther  
found due from him, or to perf  
requires.

SECT. 20. The court in which  
justice thereof, may at any time  
in term time or vacation, ascert  
master or otherwise, whether any  
the mortgage; and by an interlo  
to the mortgagee, or for his use t

SECT. 21. If suit is brought w  
that any thing is due on the mo  
of suit, unless it appears that the  
neglected, when requested, to r  
money due on the mortgage, at  
paid for taxes, repairs, improve  
or that he has otherwise by his d  
forming or tendering performan  
mencement of the suit. In all o  
court may in their discretion aw  
require.

SECT. 22. When such suit is  
appears that the tender was insu  
be entitled to a decree for reden  
sections nineteen and twenty-on  
had been set forth in the suit:  
within the three years limited for

SECT. 23. A suit for redemp  
court, or the supreme judicial co  
lies, and if brought in the super  
supreme judicial court as in other

SECT. 24. When a bill in equi  
the service shall be deemed the  
or a copy thereof, with or withou  
premises sought to be redeeme  
within three days after the day  
office of the clerk of the court to  
wise the depositing of such copy  
ment of the suit.

SECT. 25. If it appears that  
court shall inquire and determin  
what other act the plaintiff is bo  
the premises, and shall enter a d  
sum, or the performance of such  
court shall order, the plaintiff sh  
hold discharged of the mortgage.

SECT. 26. When it appears to  
unreasonably neglected or refuse  
and profits of the mortgaged est  
balance found due on the mortga  
piration of three years after such  
ment in the suit, at a rate not ex

SECT. 27. The court may at t  
the defendant neglects or refuses



required by the decree to be paid or performed, the money shall be left for his use with the clerk of the court, or that such other thing shall be done as the case may require; and the plaintiff, after having performed every thing required of him by the decree of the court, may have an execution for possession of the mortgaged premises.

SECT. 28. If, upon a suit for redemption, it appears that the defendant has received from the rents and profits of the estate or otherwise more than is due on the mortgage, the court shall award judgment and execution against him for such sum as is due to the plaintiff; and if there are several defendants, such judgment and execution may be awarded against them, either jointly or severally as the case may require, for the sums received by them or either of them respectively.

SECT. 29. When the money tendered and brought into court exceeds the sum found due on the mortgage, and when any sum is awarded to the plaintiff on account of the rents and profits received by the defendant, or for costs of suit, the court may order the whole amount so due to the plaintiff to be deducted from the money brought into court, and the same shall be restored to the plaintiff, and the residue shall be paid to the defendant.

SECT. 30. If the mortgagee or person claiming or holding under him receives from the rents and profits of the premises, or upon a tender made to him, or in any other manner, more than is due on the mortgage, and if no suit for redemption is brought against him, the mortgagor or other person entitled to such excess may recover it in an action of contract for money had and received to his use.

SECT. 31. If, during the pendency of a suit for redemption, it appears that any other person is interested therein, the court may cause him to be made a party thereto upon such terms as they shall think proper; and may order a summons or a subpoena to be issued and served on him in such manner as they shall direct; and he shall thereupon be allowed and required to appear and answer to the suit.

SECT. 32. If a person entitled to redeem a mortgaged estate dies without having made a tender for that purpose, a tender may be made, and a suit for redemption commenced and prosecuted, as well by the executors or administrators as by the heirs or devisees of the deceased.

SECT. 33. If a tender has been made by such deceased person in his lifetime, a suit for redemption founded thereon may be commenced and prosecuted by his heirs, devisees, executors, or administrators, in like manner as it might have been by the party himself; and if the plaintiff in a suit dies, the suit, whether founded on a previous tender or not, may be prosecuted to final judgment by his heirs, devisees, executors, or administrators.

SECT. 34. When the mortgagee, or the person claiming or holding under him, is under guardianship as an infant or otherwise, the tender may be made to the guardian, and he may, upon satisfaction, execute a release of the mortgage.

SECT. 35. When execution has issued on a judgment for possession and has been levied, if it shall be afterwards satisfied by payment of the amount due on the mortgage and costs, the mortgagee, his executors, administrators, or assigns, shall at the expense of the mortgagor enter on the margin of the record of the execution an acknowledgment of satisfaction, or make to the mortgagor a deed of release which shall be recorded, with proper notes of reference to the execution discharged thereby.

#### OPENING OF FORECLOSURE.

SECT. 36. If after the foreclosure of a mortgage the person entitled to the debt recovers judgment for any part of it, on the ground that the

R. S. 107, § 24.

Judgment, &c., for balance due from mortgagee.  
R. S. 107, § 25.  
6 Mass. 264.  
9 Pick. 171.  
9 Allen, 144.  
100 Mass. 271.

If money tendered, &c., exceeds sum due, amount due to be deducted, &c.  
R. S. 107, § 23.

If mortgagee receives more than due, excess may be recovered back.  
R. S. 107, § 27.  
1862, 312.

New parties may be brought in.  
R. S. 107, § 28.  
100 Mass. 271.

Executors, &c., may tender and redeem.  
R. S. 107, § 30.  
104 Mass. 278.

may bring suit upon tender by deceased.  
R. S. 107, § 31.  
12 Gray, 313.

Tender may be made to guardian.  
R. S. 107, § 32.  
12 Mass. 16.

Where execution for possession is satisfied, mortgagee, &c., to discharge.  
1849, 144, § 2.  
See Ch. 133, § 55.

Foreclosure to be opened, in case, &c.



in the deed in token of her release of dower, the sale of the property in either of the modes aforesaid shall be effectual to bar all claim and possibility of dower in the property.

1854, 377, § 1.  
1857, 229, § 2.  
101 Mass. 430.

#### MORTGAGES TO THE COMMONWEALTH.

SECT. 45. When a mortgage is made or assigned to the commonwealth, the treasurer may demand and receive the money due, and upon payment shall make and acknowledge a discharge of the mortgage.

Mortgages to the commonwealth.  
R. S. 107, § 36.

SECT. 46. If the condition of such mortgage is not duly performed, the treasurer may cause an entry for the breach of the condition to be made by himself, or by any person whom he appoints for the purpose, in the name and behalf of the commonwealth, or he may bring an action in the name of the commonwealth to recover possession of the mortgaged premises; and such possession, obtained either by entry or by action, shall have the same effect in foreclosing the right of redemption as a similar possession by any other mortgagee.

Proceedings for foreclosure;  
R. S. 107, § 36.

SECT. 47. The mortgagor or his assigns may redeem such premises in like manner and upon the same terms as if they were held by any other mortgagee; and the payment or performance of the condition for that purpose shall be made or tendered to the treasurer.

for redemption.  
R. S. 107, § 37.

SECT. 48. If the treasurer and the person applying to redeem the mortgage disagree as to the sum due, the person applying may bring a suit in equity against the commonwealth for the redemption, in the supreme judicial court for the county of Suffolk. The process shall be served on the treasurer, who shall appear and answer in behalf of the commonwealth; and like proceedings shall be had, and judgment rendered, as are provided in the case of other mortgages; except that the treasurer shall accept any payment due to the commonwealth, and upon the receipt thereof, or upon the performance of such other act as the court orders, shall discharge the mortgage in like manner as when the debt is paid without suit.

Suit in equity may be brought; service; judgment, &c.  
R. S. 107, §§ 38, 39.  
11 Allen, 175.

## CHAPTER 141.

### OF INFORMATION FOR INTRUSION AND THE RECOVERY OF LANDS BY THE COMMONWEALTH.

#### SECTION

1. Information of intrusion. Filing and summons.
2. Service and proceedings.
3. Suits, when commenced by order of legislature;
4. when without such order.
5. Public notice, in what cases to be given.
6. Who may appear as defendants.
7. Costs, when several defendants.
8. Rents and improvements.
9. Commonwealth seized without execution.
10. Judgment, how far conclusive.

#### SECTION

11. Claimant not concluded may bring writ of entry;
12. against tenant or occupant. Service and proceedings.
13. Rents and improvements in such case.
14. Costs.
15. Informations against intruders on land held for Indians.
16. District-attorney to prosecute.
17. Trial in superior court final, &c.
18. Proceedings to conform to preceding provisions.
19. On recovery, title to vest in trustees, &c.

SECTION 1. When any person unlawfully enters and intrudes upon or holds any lands belonging to the commonwealth, the same may be recovered upon an information filed and prosecuted by the attorney-general or any district-attorney, in the supreme judicial court in any county, describing the premises and setting forth the title and claim of

Information of intrusion.  
Filing and summons.  
R. S. 108, §§ 1, 2.  
9 Gray, 451.

Service and proceedings.  
R. S. 108, § 3.

Suits, when commenced by order of legislature;  
R. S. 108, § 6.

when without such order.  
R. S. 108, § 7.  
3 Pick. 224.

Public notice, in what cases to be given.  
R. S. 108, § 8.

Who may appear as defendants.  
R. S. 108, § 9.

Costs, when recovered by defendants.  
R. S. 108, § 10.

Rents and improvements.  
R. S. 108, § 11.  
See Ch. 134.

Commonwealth seized without execution.  
R. S. 108, § 5.

Judgment, how far conclusive.  
R. S. 108, § 12.

Claimant not concluded may bring writ of entry.  
R. S. 108, § 13.

Writ must be

the commonwealth thereto; and the persons therein named as in county where the lands lie.

SECT. 2. The service of the the suit shall be conducted in actions between private persons as prescribed.

SECT. 3. When the title of forfeiture for the breach of a condition by the commonwealth, or by the Bay, no suit therefor shall be commenced by the legislature.

SECT. 4. If the claim of the for want of heirs of the last title except that of the forfeit the attorney-general or district a suit therefor whenever he has the commonwealth can be established.

SECT. 5. In case of any suit as the heir of the person last seized to suppose that there is an estate in the premises whose name is not known, or cannot be found there shall, in addition to any other persons interested to appear answer the substance thereof with the weeks successively in such newspaper publication to be ninety days before the appearance of the parties.

SECT. 6. Any person who claims, though he is not named in the writ, may appear and answer therefor, but shall not recover costs against him unless he has some estate or interest in the commonwealth which fails to establish its claim.

SECT. 7. When there are costs for or against any one of the parties, he shall be required to pay the same, in like manner as if he were a party.

SECT. 8. If the commonwealth shall be chargeable for the rents and improvements, in a writ of entry between private persons.

SECT. 9. The commonwealth shall be seized and possessed of the land, and the title shall be ordered in its favor, without a writ of entry.

SECT. 10. The judgment shall be conclusive against the commonwealth and the defendants who were named as a defendant, and served within the state, and all persons claiming under them.

SECT. 11. Any person who claims the commonwealth according to the writ, until his claim is barred by the statute, or otherwise, bring a writ of entry against the commonwealth or any persons claiming under them; may deny and disavow the first suit, and allege and claim; and if it appears that he has no title, judgment and execution therefor shall be granted.

SECT. 12. If the commonwealth

the time when such new action is commenced, it shall be brought against the tenant or occupant of the premises, and in addition to the service on him a copy of the original writ or summons shall be left with the attorney-general or district-attorney fourteen days at least before the return day, that he may appear and defend the suit. If the commonwealth has granted away the premises, the action shall be brought against the tenant of the freehold. In either case it shall be conducted and disposed of as if no such information had been filed.

brought against tenant or occupant.  
Service and proceedings.  
R. S. 108, § 14.

SECT. 13. The demandant, if he recovers, shall be entitled to the rents and profits, and shall be chargeable for all improvements, in like manner as is provided in chapter one hundred and thirty-four, although the premises have not been held and possessed under the adverse title as much as six years.

Rents and improvements in such case.  
R. S. 108, § 15.

SECT. 14. Costs shall be awarded and taxed for the party prevailing. If the judgment is in favor of the commonwealth, an execution for the costs shall issue; if it is in favor of the defendant, the costs shall be paid out of the treasury, by the warrant of the governor and council.

Costs.  
R. S. 108, § 4.  
See 1862, 144.

SECT. 15. When any person unlawfully enters into, intrudes upon, or holds, any land, the title to which is in the commonwealth for the use and benefit of any tribe or body of Indians, or in trustees, guardians, treasurers, or agents, appointed by or under the authority of the commonwealth for the use and benefit of such tribe or body, or of any individuals thereof or their descendants, the same may be recovered upon an information filed and prosecuted by the attorney-general or district-attorney in the superior court for the county where the land is situated.

Informations against intruders on land held for Indians.  
1840, 84, §§ 1, 2.  
1853, 196.  
1855, 245, § 1.  
1859, 196.

SECT. 16. The district-attorney for such district shall file and prosecute such information whenever he has good reason to believe that the land can be recovered.

District-attorney to prosecute.  
1840, 84, § 2.  
1855, 245, § 2.

SECT. 17. The trial of such information in the superior court shall be final, saving to each party the right of exception in matter of law, according to the provisions of chapter one hundred and [fourteen] [thirteen.]

Trial in sup. ct. final, &c.  
1849, 84, § 8.  
1859, 196.

SECT. 18. The proceedings in the information and the effects thereof shall in all respects be conformable to the preceding provisions of this chapter; but if the final judgment is in favor of the commonwealth, a writ of possession may be sued out and served like a similar writ in other civil process.

Proceedings to conform to preceding provisions.  
1840, 84, §§ 3, 4.

SECT. 19. If in any such proceeding the commonwealth recovers possession of land to or in which such trustees, guardians, treasurers, or agents, have title or interest, such possession shall be deemed to be the possession of such trustees, guardians, treasurers, or agents, if any are living, otherwise the commonwealth shall hold the same upon and for the uses and trusts aforesaid until others are appointed.

On recovery, title to vest in trustees, &c.  
1855, 245, § 3.

## TITLE IV.

### OF CERTAIN WRITS AND PROCEEDINGS IN SPECIAL CASES.

- CHAPTER 142. — Of Trustee Process.  
 CHAPTER 143. — Of Replevin of Property.  
 CHAPTER 144. — Of Habeas Corpus, Personal Replevin, and Personal Liberty.  
 CHAPTER 145. — Of Audita Querela, Certiorari, Mandamus, and Quo Warranto.  
 CHAPTER 146. — Of Writs of Error and Review.  
 CHAPTER 147. — Of Reference to Arbitration by Agreement before a Justice of the Peace.  
 CHAPTER 148. — Of Improving Meadows and Swamps.  
 CHAPTER 149. — Of the Support and Regulation of Mills.  
 CHAPTER 150. — Of Liens on Buildings and Land.  
 CHAPTER 151. — Of Mortgages, Pledges, and Liens upon Personal Property.  
 CHAPTER 152. — Of Recognizances for Debts.  
 CHAPTER 153. — Of Seizing and Libelling Forfeited Goods.

## CHAPTER 142.

### OF TRUSTEE PROCESS.

- |   |  |
|---|--|
| <p style="text-align: center;"><b>COMMENCEMENT AND SERVICE OF PROCESS.</b></p> <p><b>SECTION</b></p> <ol style="list-style-type: none"> <li>1. In what cases the process lies, &amp;c.</li> <li>2. Writ, how issued;</li> <li>3. form of;</li> <li>4. where returnable;</li> <li>5. service of.</li> <li>6. New trustees and new service.</li> <li>7. Suit not to proceed, unless, &amp;c.</li> </ol> <p style="text-align: center;"><b>APPEARANCE AND ANSWER OF TRUSTEE.</b></p> <ol style="list-style-type: none"> <li>8. Trustee to file answer, &amp;c.;</li> <li>9. may be further examined on written interrogatories.</li> <li>10. Corporations, how to answer.</li> <li>11. Answer to be taken as true, &amp;c.</li> <li>12. Mode of trial.</li> <li>13. Trustee, default of;</li> <li>14. penalty on, for perjury.</li> </ol> <p style="text-align: center;"><b>PROCEEDINGS IN RELATION TO ADVERSE CLAIMANTS.</b></p> <ol style="list-style-type: none"> <li>15. Adverse claimant may become a party.</li> <li>16. Proceedings in such case.</li> <li>17. Testimony, how taken.</li> </ol> <p style="text-align: center;"><b>PROCEEDINGS WHEN SUIT IS PENDING AGAINST TRUSTEE.</b></p> <ol style="list-style-type: none"> <li>18. Case of attachment of a demand already suit.</li> <li>19, 20. Proceedings in such case.</li> </ol> <p style="text-align: center;"><b>WHEN AND FOR WHAT TRUSTEES ARE CHARGEABLE, &amp;c.</b></p> <ol style="list-style-type: none"> <li>21. Liability as trustees.</li> </ol> | <p><b>SECTION</b></p> <ol style="list-style-type: none"> <li>22. Liability of executors and administrators;</li> <li>23. of assignees of insolvents.</li> <li>24. Debt may be attached before it is payable.</li> <li>25. Fraudulent conveyance to trustee.</li> <li>26. Mutual demands between principal and</li> </ol> |
|---|--|

DEATH OF PARTIES.

SECTION

44. Upon death of trustee, executor, &c., liable.
46. Proceedings when trustee dies before judgment;
  48. when executor, &c., does not appear.
47. *Scire facias* against executor, &c.
48. When trustee dies after judgment;
  49. within thirty days after judgment.
- 50, 51. Judgment against executor, &c., how enforced.

PROCEEDINGS WHEN TRUSTEE HAS SPECIFIC GOODS.

- 52, 53. Case of trustee having specific goods, &c.
54. Suit not to prevent his delivering them, unless, &c.
- 55, 56. Case of trustee having lien on the goods.
57. Such goods, how disposed of;
  58. may be sold by trustee in case, &c.
59. Trustee when liable for non-delivery of such goods.

COSTS.

60. Costs and expenses of trustee.
61. Trustee to retain costs out of effects in his hands and to recover balance of plaintiff.

SECTION

62. Costs when trustee is discharged;
63. when trustee is out of state;
64. when trustee does not dwell or have place of business in county;
  65. when trustee is liable to pay;
  66. proceedings in such case;
  67. when several trustees are liable for;
  - 68, 69, 70. against trustee on *scire facias*;
  71. execution for, against trustee;
  72. on *scire facias* against several trustees;
  73. for or against adverse claimant;
  74. not to be recovered by plaintiff, if wages attached and five dollars are not recovered.

TRUSTEE PROCESS BEFORE JUSTICES OF THE PEACE, &c.

75. Trustee process before police courts, &c.
76. Proceedings.
77. Writ may run into any county in certain cases.
78. Trustee not liable out of county;
- 79, 80, 81. how may appear and answer.
82. Costs for trustee, and allowance for expenses.
83. Justice may issue *scire facias*, although, &c.

COMMENCEMENT AND SERVICE OF PROCESS.

SECTION 1. All personal actions either in the superior court or the supreme judicial court, may be commenced by trustee process; except actions of replevin, actions of tort for malicious prosecution, for slander either by writing or speaking, and for assault and battery; and any person or corporation may be summoned as trustee of the defendant therein.

In what cases the process lies, &c.  
R. S. 109, §§ 1, 4, 6.  
1859, 196.  
2 Mass. 37.  
3 Pick. 302.  
21 Pick. 109.

8 Met. 564. 13 Met. 471. 1 Gray, 424.

See § 75. 10 Allen, 468. 11 Allen, 358. 106 Mass. 120. See 1866, 148, § 8. 1870, 194.

SECT. 2. The writ shall be signed, sealed, bear teste, and be issued, like other original writs in civil actions.

SECT. 3. It shall be in the form heretofore established, authorizing an attachment of the goods and estate of the defendant in his own hands, and also in the hands of the trustee, and shall be subject to alteration as is provided in chapter one hundred and twenty-three.

Writ, how issued;  
R. S. 109, § 2.  
102 Mass. 370.  
form of;  
1794, 66, § 1.  
R. S. 109, § 8.  
99 Mass. 530.

SECT. 4. If all the persons named in the writ as trustees dwell or have usual places of business in one county, the writ shall be returnable in such county, otherwise it may be returnable in any county in which either of them dwells or has his usual place of business, without regard to the domicile of the other parties.

where returnable;  
R. S. 109, § 7.  
1852, 287.  
22 Pick. 250.  
4 Cush. 588.  
6 Cush. 560.  
12 Cush. 284.

SECT. 5. The attachment of the goods and estate of the defendant in his own hands and possession, if any, shall be made in the usual manner, and the writ shall be further served on the defendant and each of the trustees in the manner prescribed for the service of an original summons without an attachment.

service of;  
R. S. 90, § 39.  
R. S. 109, § 8.  
1837, 210, § 1.  
13 Met. 471.  
See Ch. 122.

SECT. 6. The plaintiff may at any time insert the names of other trustees, and cause the writ to be served on them; and after service on a trustee the writ may be again served on him in like manner and with the same effect as if it had not been previously served. If service is made on a trustee after service on the defendant, it shall be again served on the defendant.

New trustees and new service.  
R. S. 109, § 9.  
3 Allen, 74.

SECT. 7. If all the trustees are discharged, the plaintiff shall not proceed in the suit against the defendant unless there has been legal service of the writ on him, or notice of the suit, or unless he actually appears and answers thereto.

Suit not to proceed, unless, &c.  
R. S. 109, § 10.  
13 Met. 471.  
13 Gray, 51, 271.  
1 Allen, 371.

## APPEARANCE AND ANSWER OF TRUSTEE.

Trustee to file  
answer, &c.,  
1802, 312, § 56.  
8 Met 297.  
12 Gray, 481.  
14 Gray, 458.

may be further  
examined on  
written inter-  
rogatories  
1852, 312, § 57.

Corporations,  
how to answer.  
R. S. 109, § 6.  
1852, 312, § 56.  
2 Mass. 37.  
8 Met 554.  
1 Gray, 424.

Answer to be  
taken as true.  
R. S. 109, § 15.  
2 Mass. 90.  
4 Mass. 85.  
11 Mass. 488.  
7 Pick. 194.  
8 Pick. 87.  
Mode of trial.  
R. S. 109, § 16.

Trustee, default  
of:  
R. S. 109, § 14.  
1852, 312, § 56.

penalty on, for  
perjury  
R. S. 109, § 76.  
1852, 312.  
4 Mass. 272.  
10 Mass. 258.  
8 Cush. 190.  
4 Allen, 391.

Adverse claimant  
may become a  
party

R. S. 109, § 17.  
11 Mass. 488.  
10 Met. 180.  
7 Cush. 483.  
5 Gray, 40.  
11 Gray, 225.

111 M. 508

Proceedings in  
such case  
R. S. 109, § 18.  
See 1865, 48.

Testimony, how  
taken.  
R. S. 109, § 19.  
1889, 107, § 1.

SECT. 8. Every person summoned as trustee shall appear and file his answer within the first ten days of the return term of the writ if the court sits so long, or otherwise before the adjournment of the court, unless the court for good cause shown allows further time therefor. The answer shall be sworn to by the trustee, and shall disclose plainly, fully, and particularly as practicable, what goods, effects, or credits, of the defendant, if any, were in his hands or possession at the time of the service of the writ.

SECT. 9. The plaintiff may fr trustee upon written interrogator swers thereto shall be sworn to an days after notice to the trustee o rogatories, unless the court othe filed, the court may pass such or

SECT. 10. Corporations sumn swer by their cashier, treasurer, shall appoint or as the court sh: The answer and examination on received as the answer and exam

SECT. 11. The answers and s be considered as true, in deciding party may allege and prove any him, that may be material in dec

SECT. 12. Any question of fa tions may be tried and determine a jury in such manner as the cou

SECT. 13. When a person du appear and answer to the suit as and adjudged a trustee.

SECT. 14. If a person summe ministrator of such person, or if appears and answers for a corpor tion on oath, knowingly and wilf own goods and estate, pay to the his executors or administrators, recovered therein, with interest t tort; and he shall moreover, on adjudged guilty of perjury.

## PROCEEDINGS IN RELAT

SECT. 15. If it appears that hands of a supposed trustee, are an assignment from the defenda such claimant to appear and mai tarily appear, notice for that pur in such manner as the court shall

SECT. 16. If such claimant a to the suit so far as respects his question, and may allege and pre the supposed trustee; and such mined in the manner before prov

SECT. 17. Upon the trial of a allegations of a party, any part o sitions taken and reduced to writ case, or orally, as the court shall



PROCEEDINGS WHEN SUIT IS PENDING AGAINST TRUSTEE.

SECT. 18. If during the pendency of an action the defendant is summoned as the trustee of the plaintiff, the first suit may nevertheless proceed so far as to ascertain by a verdict, award, or otherwise, what sum is due from the defendant. The suit shall not be delayed on account of the trustee process, unless the court for good cause shown sees fit to continue it for judgment until the termination of the trustee suit, or until the attachment therein is dissolved by the discharge of the trustee, or by the satisfaction of the judgment, or otherwise.

Case of attachment of a demand already in suit.  
R. S. 109, § 31.  
7 Mass. 149.  
See 1866, 155.

SECT. 19. The court may, on application of the plaintiff in the trustee process, continue the other suit, on such terms as it deems just and reasonable. If it is not so continued, and judgment is rendered against the defendant, he shall not afterwards be adjudged a trustee on account of the demand so recovered against him, so long as he is liable to an execution on the judgment.

Proceedings in such case.  
R. S. 109, § 32.

SECT. 20. If, before final judgment is rendered in the first suit, the defendant in that suit is adjudged a trustee in the other, and pays thereon the money demanded in the first suit, or any part thereof, the fact shall be stated on the record of the first suit, and judgment therein shall be rendered for the costs due to the plaintiff, and for such part of the debt or damages as remains due and unpaid.

Same subject.  
R. S. 109, § 33.

WHEN AND FOR WHAT TRUSTEES ARE CHARGEABLE, &c.

SECT. 21. When a person is summoned as trustee having goods, effects, or credits, of the defendant intrusted or deposited in his hands or possession, such goods, effects, and credits, shall be thereby attached and held to respond the final judgment in the suit, in like manner as goods or estate when attached by the ordinary process, except as hereinafter provided.

Liability as trustees;  
R. S. 109, § 4.  
7 Mass. 259.  
2 Pick. 617.  
3 Pick. 392.  
5 Pick. 28, 178.  
6 Pick. 120.  
8 Met. 303.  
12 Met. 397.  
18 Met. 471.

SECT. 22. Debts, legacies, goods, effects, or credits, due from, or in the hands of, an executor or administrator as such may be so attached in his hands.

of executors and administrators;  
R. S. 109, § 62.  
7 Mass. 271.

SECT. 23. Any dividend of an estate of an insolvent debtor, if it is not upon a claim for wages which would not have been attachable in the hands of the original debtor, may after the dividend is declared be so attached in the hands of the assignee.

of assignees of insolvents.  
1853, 49.  
6 Cush. 558.  
See § 29.

SECT. 24. Any money or other thing due to the defendant may be attached as herein mentioned before it has become payable, if it is due absolutely and without any contingency; but the trustee shall not be compelled to pay or deliver it before the time appointed by the contract.

Debt may be attached before it is payable.  
R. S. 109, § 34.  
13 Gray, 200.  
39 Mass. 550.

SECT. 25. If a person summoned as trustee has in his possession goods, effects, or credits, of the defendant, which he holds by a conveyance or title that is void as to the creditors of the defendant, he may be adjudged a trustee, although the defendant could not have maintained an action therefor against him.

Fraudulent conveyance to trustee.  
R. S. 109, § 35.  
4 Mass. 508.  
5 Mass. 390.  
12 Mass. 140.

SECT. 26. Every trustee shall be allowed to retain or deduct out of the goods, effects, and credits, in his hands, all demands against the defendant of which he could have availed himself if he had not been summoned as a trustee, whether by way of set-off on a trial, or by the set-off of judgments or executions between himself and the principal; and he shall be liable for the balance only, after all mutual demands between him and the principal are adjusted.

Mutual demands between principal and trustee.  
R. S. 109, § 36.  
16 Mass. 473.  
12 Met. 567.  
7 Gray, 153.  
14 Gray, 184.  
6 Allen, 124.

SECT. 27. In the demands mentioned in the preceding section to be adjusted between the trustee and the defendant, there shall not be

Certain demands excluded.

1154.67

R. S. 109, § 37.

Trustee not chargeable if he has paid over before knowledge of service;  
R. S. 109, § 5.  
8 Pick. 66.  
8 Met. 301.  
5 Cush. 545.  
4 Allen, 485.  
98 Mass. 142.

nor for a certain sum due for wages, &c.  
1842, 91.  
1857, 200, § 2.  
See Ch. 90, § 29.  
14 Gray, 487.  
2 Allen, 123.  
6 Allen, 572.  
9 Allen, 107.  
If savings bank charged as trustee, and identity of defendant doubtful, plaintiff to give bond.  
1850, 48.  
7 Gray, 184.

What demands not attachable.  
R. S. 109, § 30.  
See Ch. 118, § 73.  
8 Gray, 229.  
11 Gray, 18.

15th. 67  
2 Mass. 289.  
5 Mass. 319.  
7 Cush. 257.  
9 Allen, 570.

7 Mass. 259.  
14 Allen, 218.  
99 Mass. 550.  
3 Mass. 38, 68.  
8 Pick. 1, 66.  
6 Pick. 120.  
4 Met. 486.  
12 Met. 12.  
2 Mass. 94.  
3 Mass. 121.  
See §§ 18, 19, 20.

Form of judgment against trustee.  
R. S. 109, § 42.  
21 Pick. 109.  
11 Gray, 19.

Goods not demanded in 30 days may be attached again;  
R. S. 109, § 43.  
1 Mass. 117.  
6 Gray, 241.

or recovered by defendant;  
R. S. 109, § 44.

or otherwise delivered to officer on demand.  
R. S. 109, § 45.  
6 Gray, 241.

included on either side any claim for unliquidated damages for wrongs or injuries.

SECT. 28. If after the service of process on the trustee, but before he has knowledge thereof, he in good faith makes any payment, or becomes liable to a third person, by reason of the goods, effects, or credits, in his hands, or has delivered the same to the defendant, or to any other person entitled thereto, he shall be allowed therefor in the same manner as if the payment or delivery had been made, or the liability incurred, before the service of the writ.

SECT. 29. When the wages for the personal labor and services of a defendant are attached for a debt or demand other than for necessities furnished him or his family, and when a debt due for the services of the wife or minor children of the defendant is attached, there shall be reserved in the hands of the trustee a sum not exceeding twenty dollars, which shall exempt from such attachment.

SECT. 30. When a savings bank or an institution for savings is charged as trustee, and in the opinion of the court there arises upon the answer a doubt as to the identity of the defendant, the court may in its discretion require the plaintiff to give bond with surety or sureties to be approved by the court, conditioned to save such bank or institution harmless therefrom.

SECT. 31. No person shall be adjudged a trustee in either of the cases following, viz.:—

First. By reason of having drawn, accepted, made, or indorsed, any negotiable bill, draft, note, or other security when either is payable on time and is not overdue: 14 Allen, 354. See 1862, 62, § 1. 1865, 43. 1869, 96.

Second. By reason of any money or other thing received or collected by him as a sheriff or other officer by force of an execution or other legal process in favor of the defendant in the trustee process, although the same has been previously demanded of him by the defendant:

Third. By reason of any money in his hands as a public officer, and for which he is accountable to the defendant merely as such officer:

Fourth. By reason of any money or other thing due from him to the defendant, unless it is at the time of the service of the writ on him due absolutely and without depending on any contingency: nor

Fifth. By reason of a debt due from him on a judgment, so long as he is liable to an execution thereon.

#### JUDGMENT, EXECUTION, AND SCIRE FACIAS.

SECT. 32. When a person is adjudged trustee in the original suit, it shall not be necessary to specify in the judgment the sum for which he is chargeable; but if upon a writ of *scire facias* against him, it appears that he is chargeable as trustee, the sum shall be expressed in the judgment.

2 Allen, 566. 99 Mass. 530.

SECT. 33. If, after a person is adjudged trustee, the goods, effects, and credits, in his hands, are not demanded of him, by force of the execution, within thirty days after final judgment, they shall be liable to another attachment, whether made before or after the judgment, in like manner as if such prior attachment had not been made.

SECT. 34. If there is no such second attachment, the defendant in the suit may recover them, if not demanded as aforesaid within said thirty days, in like manner as if they had not been attached.

SECT. 35. If no such second attachment is made of the same goods, effects, and credits, and no action is brought therefor by the defendant, and if they are not paid or delivered to him before they are demanded of the trustee by the officer, the trustee shall be liable to pay and deliver the same, when so demanded, although it should be after the expiration of said thirty days.

SECT. 36. If the trustee cannot be found in the state by the officer to whom the execution is committed for service, a copy of the execution may be left at his dwelling-house or last and usual place of abode, with a notice to him indorsed thereon and signed by the officer, signifying that he is required to pay and deliver, towards satisfying the execution, the goods, effects, and credits, for which he is liable; and this shall be a sufficient demand for all the purposes expressed in the three preceding sections.

Demand on absent trustee.  
R. S. 109, § 46.

SECT. 37. The judgment against a trustee shall acquit and discharge him from all demands by the defendant, or his executors or administrators, for all goods, effects, and credits, paid, delivered, or accounted for, by the trustee, by force of such judgment.

Judgment against trustee shall protect him, &c.;  
R. S. 109, § 47.  
7 Gray, 270, 506.

SECT. 38. If a person summoned as trustee is discharged, the judgment shall be no bar to an action brought against him by the defendant for the same demand.

for him not to bar defendant.  
R. S. 109, § 48.

SECT. 39. If a person who is adjudged a trustee in the original suit does not pay over to the officer, upon demand, goods, effects, or credits, sufficient to satisfy the execution, and if the execution is not otherwise satisfied, the plaintiff may sue out a writ of *scire facias* against all or a separate writ against each of the trustees, from the court in which the judgment was rendered, to show cause why judgment and execution should not be awarded against him and his own goods and estate, for the sum remaining unsatisfied on the judgment against the defendant.

*Scire facias* against trustee, after judgment.  
R. S. 109, § 61.  
4 Cush. 420.  
9 Cush. 289.  
See § 72.  
10 Gray, 194.  
2 Allen, 566.

SECT. 40. If a trustee duly served with the *scire facias* neglects to appear and answer, he shall be defaulted; and if he was not examined in the original suit, judgment shall be rendered against him upon such default, for the whole sum remaining unsatisfied on the judgment against the defendant.

Proceedings therein upon default:  
R. S. 109, § 39.

SECT. 41. If a trustee who is defaulted on the *scire facias* has been examined in the original suit, judgment in the *scire facias* shall be rendered upon the facts stated in that examination, or proved in the trial had thereon, for any part remaining in his hands, of the goods, effects, or credits for which he was originally chargeable as a trustee, or for so much thereof as then remains unsatisfied on the judgment against the defendant.

same subject;  
R. S. 109, § 40.  
6 Allen, 584.

SECT. 42. If the trustee appears and answers to the *scire facias*, and if he had not been examined in the original suit, he shall be liable to be examined in the same manner as he might have been in that suit; and if he had been examined in the original suit, the court may require or permit him to be examined anew in the suit on the *scire facias*. In either case he shall be permitted to answer and prove any matter that may be necessary or proper for his defence in the suit on the *scire facias*. Upon the whole matter appearing upon such examination and trial, the court shall render such judgment as law and justice require.

upon examination of trustee.  
R. S. 109, § 41.  
21 Pick. 109  
1 Met. 426.  
4 Cush. 431.  
10 Gray, 371.  
11 Gray, 379.  
2 Allen, 566.

111 M. 154

SECT. 43. No writ of *scire facias* shall be maintained against a person adjudged trustee unless served upon him within two years after the rendition of judgment in the original suit; except that if the money or other thing is not payable when the judgment is rendered, said writ may be maintained if served within one year after payment becomes due.

Writ of *scire facias* to be served within two years after judgment, except, &c.  
1844, 40, § 1.  
4 Gray, 346.

#### DEATH OF PARTIES.

SECT. 44. If a person summoned as trustee in his own right dies before the judgment recovered by the plaintiff is fully satisfied, the goods, effects, and credits in his hands at the time of the attachment shall remain bound thereby, and his executors or administrators shall be liable therefor in like manner as if the writ had been originally served on them.

Upon death of trustee, his executor, &c., liable.  
R. S. 109, § 63.

Proceedings  
when trustee dies  
before judgment;  
R. S. 109, § 64.

SECT. 45. If he dies before judgment in the original suit, his executor or administrator may appear voluntarily, or may be cited to appear, as in other cases. The further proceedings shall then be conducted in the same manner as if the executor or administrator had been originally summoned as a trustee, except that the examination of the deceased, if any is filed, shall have the same effect as if he were living.

when executor,  
&c., does not  
appear.  
R. S. 109, § 65.

SECT. 46. If the executor or administrator does not appear, the plaintiff, instead of suggesting the death of the trustee, may take judgment against him by default or otherwise as if he were living, and the executor or administrator shall pay on the execution the amount which he would have been liable to pay to the defendant, and shall be thereby discharged for the amount so paid, in like manner as if the executor or administrator had been himself adjudged trustee.

*Scire facias*  
against executor,  
&c.  
R. S. 109, § 66.

SECT. 47. If, in the case last mentioned, the executor or administrator does not voluntarily pay the amount in his hands, the plaintiff may proceed against him by a writ of *scire facias*, as if the judgment in the first suit had been against him as trustee.

When trustee  
dies after judg-  
ment;  
R. S. 109, § 67.

SECT. 48. If the person summoned as trustee dies after judgment in the original action, the executor or administrator may pay on the execution the amount which the deceased would have been liable to pay if living, and he shall be discharged from all further demands on account thereof, in the manner before mentioned. If he refuses so to do, the plaintiff may proceed against him by a writ of *scire facias*, in the manner provided in the preceding section.

within thirty  
days after judg-  
ment.  
R. S. 109, § 68.

SECT. 49. If a person against whom execution issues as trustee is not living at the expiration of thirty days after final judgment in the trustee suit, the demand to be made for the purpose of holding the attachment may be made of the executor or administrator of the deceased person at any time within thirty days after his appointment, and shall have the same effect as if made within thirty days after the judgment.

Judgment  
against executor,  
&c., how en-  
forced.  
R. S. 109, § 69.

SECT. 50. When an executor or administrator is adjudged trustee for or on account of goods, effects, or credits in his hands or possession merely as such executor or administrator, whether in a suit originally commenced against him as trustee, or against the deceased testator or intestate, and whether the judgment is in the original suit or on a writ of *scire facias*, the execution shall not be served on his own goods or estate, nor on his person, but he shall be liable for the amount in his hands, in like manner and to the same extent only as he would have been to the defendant, if there had been no trustee process.

Same subject.  
R. S. 109, § 70.

SECT. 51. If, after final judgment against an executor or administrator for a certain sum due from him as trustee, he neglects to pay the same, the original plaintiff in the trustee process shall have the same remedy for recovering the amount, either upon a suggestion of waste or by a suit on the administration bond, as the defendant in the trustee process would have had upon a judgment recovered by himself for the same demand against the executor or administrator.

#### PROCEEDINGS WHEN TRUSTEE HAS SPECIFIC GOODS.

Case of trustee  
having specific  
goods, &c.  
R. S. 109, § 22.  
7 Cush. 487.  
6 Gray, 320.  
104 Mass. 167.

SECT. 52. When a person is charged as trustee by reason of goods or chattels, other than money, which he holds or is bound to deliver to the defendant, he shall deliver the same, or as much thereof as may be necessary, to the officer who holds the execution; and the goods shall be sold by the officer, and the proceeds applied and accounted for in the same manner as if they had been taken on an execution in common form.

Same subject.  
R. S. 109, § 23.

SECT. 53. The value of any goods so delivered shall be ascertained and fixed, as between the trustee and defendant, in like manner and

upon the same principles as if they had been delivered to the defendant. Upon the application of either party the court may, pending the original suit or upon the *scire facias*, determine the value, and make any other order in relation to such goods and the delivery thereof that may be necessary or proper to protect the rights of the trustee and defendant.

SECT. 54. When a person summoned as trustee is bound by contract to deliver specific goods to the defendant at a certain time and place within the state, he shall not be compelled by reason of the trustee process to deliver them at any other time or place; and he may, notwithstanding such process, tender or deliver them to the person entitled under the contract, at the time and place therein mentioned, unless he shall have been previously adjudged a trustee on account thereof.

Suit not to prevent trustee delivering them, unless, &c.  
R. S. 109, § 24.  
6 Mass. 60.  
104 Mass. 167.

SECT. 55. When it appears that such goods in the hands of a person summoned as trustee are mortgaged or pledged, or in any way liable for the payment of a debt to him, the attaching creditor may be allowed, under an order of the court for that purpose, to pay or tender the amount due to the trustee; and he shall thereupon deliver the goods in the manner before provided to the officer who holds the execution.

Case of trustee having lien on the goods.  
R. S. 109, § 25.  
1 Met. 172.  
11 Allen, 354.

SECT. 56. If the goods in such case are held for any purpose other than to secure the payment of money, and if the contract, condition, or other thing, to be performed, is such as can be performed by the attaching creditor without damage to the other parties, the court may make an order for the performance thereof by him. Upon such performance, or a tender, the trustee shall deliver the goods in the manner before provided to the officer who holds the execution.

Same subject.  
R. S. 109, § 26.

SECT. 57. All goods received by the officer under the two preceding sections, shall be sold and disposed of, in the same manner as if they had been taken on an execution in common form; except that from the proceeds of the sale the officer shall repay to the attaching creditor the amount paid by him to the trustee for the redemption of the goods, with interest thereon, or shall indemnify the creditor for any other act or thing by him done or performed pursuant to the order of the court for the redemption of the goods.

Such goods, how disposed of:  
R. S. 109, § 27.

SECT. 58. Nothing contained in the preceding sections shall prevent the trustee from selling the goods in his hands for the payment of the demand for which they are mortgaged, pledged, or otherwise liable, at any time before the amount due to him is paid or tendered as before mentioned, if such sale would be authorized as between him and the defendant.

may be sold by trustee in case, &c.  
R. S. 109, § 28.

SECT. 59. If a trustee refuses or neglects to deliver any goods in his hands when thereunto lawfully required by the officer who serves the execution, he shall, after deducting the amount of any lien he has thereon, be liable to the plaintiff in the action for the value thereof, to be recovered as money is recovered when not paid on the first execution pursuant to the judgment against a trustee.

Trustee when liable for non-delivery of such goods.  
R. S. 109, § 29.  
8 Allen, 74.

#### COSTS.

SECT. 60. If a person summoned as trustee appears and answers upon oath as herein provided, he shall be allowed his costs for travel and term fees, and such further sum for counsel fees and other necessary expenses as the court may deem reasonable. But if a trial is had between the plaintiff and alleged trustee upon any issue of fact, the court may award costs to either party as justice and equity require.

Costs and expenses of trustee.  
R. S. 109, § 49. 117 m. 91  
1852, 312, § 81.  
19 Pick. 354.  
12 Met. 397.  
12 Cush. 181.  
6 Allen, 122.

SECT. 61. If he is adjudged trustee, his costs and charges shall be deducted and retained out of the goods, effects, and credits, in his hands,

Trustee to retain costs out of effects in his

hands and recover balance of plaintiff

R. S. 109, § 60.  
1845, 188.

10 Met 580.

12 Cush 181.

11 Gray, 19.

2 Allen, 568.

Costs when trustee is discharged;  
R. S. 109, § 61.

when trustee is out of state;  
R. S. 109, § 62.  
10 Mass. 25.

when trustee does not dwell or have place of business in county;  
R. S. 109, § 63.  
1852, 287.

when trustee liable to pay;  
R. S. 109, § 64.  
1852, 312, § 81.  
1852, 287.

proceedings in such case;  
R. S. 109, § 65.

when several trustees are liable for;  
R. S. 109, § 66.

against trustee on *scire facias*;  
R. S. 109, § 67.

same subject;  
R. S. 109, § 68.

same subject;  
R. S. 109, § 69.  
1852, 312, §§ 68, 81.

execution for, against trustee;  
R. S. 109, § 60.  
1852, 312, § 81.

on *scire facias* against

and he shall be chargeable for the balance only to be paid on the execution. If such goods, effects, and credits, are not of sufficient value to discharge the costs taxed in his favor, he shall have judgment and execution against the plaintiff for the balance of such costs, after deducting the sum disclosed, in the same manner as if he had been discharged.

SECT. 62. If he is discharged for any cause, his costs and charges shall be paid by the plaintiff, and he shall have judgment and execution therefor.

3 Cush. 241.

6 Allen, 122.

SECT. 63. If the person summoned as trustee is out of the state at the time of the service of the original writ on him, and appears and answers at the first term after his return, he shall be allowed for his costs and charges in the same manner as if he had appeared at the term when the action was entered.

SECT. 64. If the person so summoned has no place of business in the county in which the action is brought, he shall in all cases be allowed his costs and recovered as before provided, whether he appears at the first term, or at any other term, and whether in the original action or in the execution against him.

SECT. 65. If a person summoned has no usual place of business in the county, and does not appear within the time herein prescribed, and the plaintiff recovers judgment in the action, the costs recovered and received by him, for all term fees, until he appears.

SECT. 66. If he does not pay the costs taxed against him, the officer who serves the execution, on his return, and if it also appears by the return that he has not paid, the court shall award a new execution against him.

SECT. 67. If there are several persons summoned as trustees, and they are all liable for costs under the provisions of the execution shall be awarded against them in proportion to their respective shares, and the others shall indemnify him for the excess.

SECT. 68. If a person summoned as trustee has no usual place of business in the county, and defaults in the original suit, and a writ of execution is issued against him, he shall be liable for all costs of the execution, whether on his own goods and estate, whether or not, except as hereinafter provided.

SECT. 69. If it appears that the person summoned has no goods, effects, or credits, liable to the execution, and he has delivered the whole amount of the original judgment, he shall not be liable for costs, but he shall be entitled to recover costs.

SECT. 70. If the person so defaulted in the original suit by his absence from the county, the court may, on *scire facias*, but the court may, if it appears that he has no costs and charges for travel and necessary expenses, to be retained or recovered in the original suit.

SECT. 71. If a person summoned as trustee has no usual place of business in the county, and defaults in the original suit, the costs on the *scire facias* shall be added to the costs in the original suit, one execution shall be issued against him for both sums.

SECT. 72. When there are several persons summoned as trustees, and they are all liable for costs under the provisions of the execution shall be awarded against them in proportion to their respective shares, and the others shall indemnify him for the excess.

*facias*, if the plaintiff, without reasons which the court deems sufficient, sues out two or more writs, when he might have joined all the trustees in one writ, he shall recover no more costs than if he had sued out only one writ, and the court may apportion the costs equally and proportionally among all the trustees liable therefor.

SECT. 73. When an adverse claimant is admitted as a party, the court may award costs between him and the attaching creditor and supposed trustee, or either of them, as justice and equity require.

SECT. 74. If the wages for the personal labor and services of a person are attached by the trustee process on a claim other than for necessities, and the plaintiff does not recover a sum amounting to five dollars as debt, he shall recover no costs of suit.

several trustees.  
R. S. 109, § 61.

Costs for or  
against adverse  
claimant:  
R. S. 109, § 21.  
6 Allen, 122.  
not for plain-  
tiff if wages at-  
tached, &c.  
1857, 200, § 1.  
See Ch. 90, § 29.

#### TRUSTEE PROCESS BEFORE JUSTICES OF THE PEACE, &c.

SECT. 75. All personal actions but those excepted in section one, which are within the jurisdiction of, and may be brought by the ordinary process before, a justice of the peace, or police court, may be so brought by the trustee process.

SECT. 76. The foregoing provisions of this chapter shall, as far as applicable and except as is hereinafter provided, apply to such suits before police courts and justices of the peace.

SECT. 77. When a person is summoned as trustee who is liable to be charged as such, and the defendant resides in this state, but in a county other than that in which the writ is returnable, the writ may run into any county, and be served on the defendant fourteen days at least before its return day, in like manner as if issued from the superior court.

Trustee process  
before police  
court, &c.  
R. S. 109, §§ 71,  
76, 77.

Proceedings.  
R. S. 109, § 73.

Writ may run  
into any county  
in certain cases.  
1857, 210, § 2.  
1838, 147, § 3.  
1852, 287.  
1850, 152, § 1.  
1 Allen, 371.  
See 1896, 279, § 9.  
1857, 355, § 8.

SECT. 78. No person shall be held to answer as a trustee in an action before a justice of the peace, or police court, in any other county than that in which he dwells or has his usual place of business. If he is out of the county at the time of the service of the original writ on him, and does not return before the final judgment in the suit, he shall not be chargeable as trustee.

Trustee not lia-  
ble out of  
county:  
R. S. 109, § 72.  
1852, 287.  
1856, 152, § 1.

SECT. 79. If the person summoned as trustee appears either in person or by attorney and declares in writing that he had not in his hands or possession, at the time when the writ was served on him, any goods, effects, or credits, of the defendant, and submits himself thereupon to examination upon his oath, and if the plaintiff declines to examine him, or if upon such examination his declaration appears to be true, he shall be discharged.

how may ap-  
pear and answer.  
R. S. 109, § 11.  
2 Mass. 96.  
4 Mass. 85.  
11 Mass. 498.  
7 Pick. 194.  
8 Pick. 67.  
4 Cush. 314.  
9 Cush. 590.  
10 Cush. 104.  
Same subject.  
R. S. 109, § 12.  
8 Pick. 25.

SECT. 80. Every such declaration may be signed by attorney, and if the plaintiff proceeds to examine the supposed trustee thereupon, he shall propose interrogatories in writing, which shall be answered in writing and signed and sworn to by the supposed trustee.

SECT. 81. If a person so summoned admits that he has in his hands any goods, effects, or credits, of the defendant, or wishes to refer that question to the justice or court upon the facts, he may make a written declaration on oath of such facts as are material. The plaintiff may then examine him on written interrogatories, the answers to which shall be sworn to, and in every case the declaration, interrogatories, and answers, shall be filed with the justice or court.

Same subject.  
R. S. 109, § 13.

SECT. 82. When a person summoned as a trustee is entitled to costs, his travel and attendance shall be taxed at the same rate as if he were a defendant, and he shall be allowed such further sum for his counsel fee and other necessary expenses as the justice or court deems reasonable.

Costs for trustee,  
and allowance for  
expenses.  
R. S. 109, § 74.

SECT. 83. When it becomes necessary to sue out a writ of *scire facias* against a person summoned as trustee, it may be issued by the

Justice may issue  
*scire facias*, al-  
though, &c.

R. S. 109, § 75.  
1852, 814.  
1859, 190.

justice of the peace by whom, or was rendered, although the amount was one hundred dollars, or if issued by a justice of the peace, three hundred dollars.

## CHAP

### OF REPLEV

#### REPLEVIN OF CATTLE DETAINED.

##### SECTION

1. Writ of replevin for beasts detained or impounded.
2. Proceedings thereon.
3. Plaintiff to give bond;
4. In double the value of property as appraised.
5. Return of writ, with bond, &c..
6. Judgment for defendant, how rendered.
7. Beasts returned, how disposed of.
8. Judgment for plaintiff.
9. Certain cases to be removed to superior court &c.

#### REPLEVIN OF OTHER PROPERTY.

10. Replevin of goods.
11. Writ, how sued out, &c.

#### REPLEVIN OF

Writ of replevin for beasts detained or impounded.  
1789, 26.  
R. S. 113, § 17.  
2 Cush 88.  
7 Cush 355.  
See Ch 26, §§ 21-38.

Proceedings thereon.  
R. S. 113, § 18.

Plaintiff to give bond  
R. S. 113, § 19.  
1 Met 606.  
10 Met 291.  
12 Met 516.  
8 Cush 556.  
6 Gray, 27.  
6 Gray, 363.  
See 1870, 309.

In double the value of property as appraised.  
R. S. 113, § 20.  
8 Allen, 308.

Return of writ, with bond, &c.  
R. S. 113, § 21.  
97 Mass. 316.

SECTION 1. Any person who in order to recover a penalty or fine by their going at large, or to obtain redress for any wrong done by them, may be arrested and prosecuted before a justice of the peace in the same form substituted in such cases.

SECT. 2. The writ shall be so framed as to be heard and determined, civil actions before a justice of the peace in which a different course is required.

SECT. 3. The writ shall not be returnable against one in his behalf executes and defendant with sufficient sureties to prosecute the replevin to final judgment and costs as the defendant shall be liable for. The property in case such shall be returned to the defendant.

SECT. 4. The writ shall require the defendant to pay double the value of the property replevined, or the sum or amount for which it was replevined, if he does not agree as to the value of the property with a disinterested and discreet person or persons, and the penalty of the bond shall be payable by such persons, or any two of them.

SECT. 5. The officer shall return the writ with the justice or court for trial, and include in his return, indorsed on the writ, a statement of the three appraisers, the



SECT. 6. If it appears upon the nonsuit of the plaintiff, or upon a trial or otherwise, that the beasts were lawfully taken or distrained, the defendant shall have judgment for the sum found to be due from the plaintiff for the penalty or forfeiture, or for the damages for which the beasts were impounded, together with all the legal fees, costs, charges, and expenses, incurred by reason of the distress, and also the costs of the action of replevin; or instead thereof a judgment, for a return of the beasts to be held by the defendant irrepleviable by the plaintiff, and for his damages for the taking thereof by the replevin, and for his costs.

Judgment for defendant, how rendered.  
R. S. 113, § 22.

SECT. 7. When the beasts are returned to the defendant pursuant to such judgment, they shall be held and disposed of in like manner as if they had not been replevied.

Beasts returned, how disposed of.  
R. S. 113, § 23.

SECT. 8. If it appears upon the default of the defendant, or upon a trial or otherwise, that the beasts were taken or distrained without any sufficient or justifiable cause, the plaintiff shall have judgment for his damages caused by the unjust taking and detaining of the beasts, and for his costs of the suit.

Judgment for plaintiff.  
R. S. 113, § 24.

SECT. 9. When it appears that the sum demanded for the penalty, forfeiture, or damages, exceeds the sum of one hundred dollars, or that the property of the beasts is in question, and that their value exceeds one hundred dollars, or that the title to real estate is concerned or brought in question, the case shall at the request of either party be transferred to the superior court, and be there disposed of in like manner as is provided in chapter one hundred and twenty, with respect to actions brought before a justice of the peace, in which the title to real estate is concerned or brought in question.

Certain cases to be removed to superior court.  
R. S. 113, § 25.  
1852, 314, § 1.  
1859, 196.

#### REPLEVIN OF OTHER PROPERTY.

SECT. 10. When any goods exceeding in value twenty dollars, are unlawfully taken or detained from the owner or person entitled to the possession, or when any goods of that value attached on mesne process or taken on execution are claimed by a person other than the defendant in the suit in which they are so attached or taken, such owner or other person may cause them to be replevied.

Replevin of goods  
R. S. 113, § 27.  
1 Mason, 319.  
1 Greenl 133.  
3 Greenl 1-3.  
4 Greenl 393.  
15 Mass. 373.  
16 Mass. 147.  
17 Mass. 610.

SECT. 11. When the property alleged to be detained does not exceed in value one hundred dollars, the writ may be sued out from, and returnable to, a justice of the peace, or police court, for the county in which the goods are detained; and in all cases the writ may be sued out of the superior court, and shall in such case be returnable to the same court for the county in which the goods are detained. It shall be substantially in the form heretofore established and used, and in all particulars in which a different course is not prescribed, shall be sued out, served, and returned, like other writs in civil actions.

Writ, how sued out, &c.  
1789, 26.  
R. S. 90, § 2.  
R. S. 113, § 28.  
1852, 314, § 1.  
1859, 196.  
1 Mass. 153.  
6 Mass. 3.  
1 Met. 598.  
7 Met. 590.  
10 Met. 291.  
4 Cush. 339.  
8 Cush. 553.

SECT. 12. The officer, before serving the writ, shall take from the plaintiff, or some one in his behalf, a bond to the defendant, with sufficient sureties in double the value of the goods to be replevied, conditioned like the bond herein before described to be taken upon a writ of replevin for beasts distrained or impounded; and the officer shall proceed in the appraisal of the goods, and the return of the writ, in the manner provided with respect to such action for beasts distrained or impounded; except that when the writ is returnable to the superior court the bond shall be left with the clerk of the court for the use of the defendant.

Plaintiff to give bond.  
R. S. 113, § 29.  
1859, 196.  
8 Mass. 153.  
11 Mass. 282.  
14 Mass. 213.  
6 Pick. 226.  
10 Met. 291.  
8 Cush. 553.  
5 Gray, 27.  
13 Gray, 490.  
3 Allen, 312, 426.  
8 Allen, 398.  
105 Mass. 48, 52.  
See 1870, 390.

SECT. 13. If it appears upon the nonsuit of the plaintiff, or upon a trial or otherwise, that the defendant is entitled to a return of the goods, he shall have judgment therefor with damages for the taking by the replevin, and his costs.

Judgment for defendant.  
R. S. 113, § 30.  
14 Gray, 419.  
1 Allen, 381.  
2 Allen, 431.

116 M. 371

Damages for  
delaying execu-  
tion.

R. S. 113, § 31.  
4 Mass. 614.  
12 Mass. 408.  
11 Pick. 223.  
104 Mass. 834.

Sums recovered  
on replevin  
bond, &c., how  
disposed of.

R. S. 113, § 32.  
105 Mass. 49, 52.

Same subject.  
R. S. 113, § 33.  
1847, 158.

Judgment for  
plaintiff.  
R. S. 113, § 34.  
8 Allen, 98.

Goods attached  
held liable after  
return.  
R. S. 113, § 36.

Damages, by  
whom assessed.  
R. S. 113, § 35.  
1852, 314, § 2.

Form of writs

SECT. 14. If the goods were if they were then attached, on the attaching creditor, and if it is delayed by means of the replevin defendant, in case of judgment rate of twelve per cent. a year, as the service of the execution.

SECT. 15. All sums recovered for or on account of goods attached recovered in an action upon the goods, shall be applied and disposed of in the following manner:—

First. To pay the lawful feasible expenses of the action of as far as they are not reimbursed.

Second. To pay to the creditor, or taken on execution, as much thereof as remains unpaid twelve per cent. a year, so long as the creditor, or the service of replevin: and

Third. If the attaching creditor's judgment in the suit in which the goods remain, of the money so recovered due to the creditor, the same shall be applied in the same manner as would and on if any, of the proceeds of sale, on execution.

SECT. 16. All sums received from the sale of goods attached or returned, or received for the value of the goods from the officer for the return, shall be applied towards the discharge of the creditor; and all sums received from his execution, shall be applied, and the other half in discharge of the debt.

SECT. 17. If it appears upon the trial that the goods were unlawfully taken or attached, the plaintiff shall have judgment by, and for his costs of the suit.

#### GENERAL

SECT. 18. If the goods which are attached, shall, in case of judgment for a return, be held liable until final judgment in the suit, until thirty days thereafter, in order that such final judgment is rendered, the goods when replevied were to be held subject to the same at the return, in order that the service thereof completed, in the event the goods had not been replevied.

SECT. 19. The damages in the case of the defendant, shall be assessed if there is a trial by jury: otherwise, the damages shall be assessed by the court or justice, or as damages are assessed in other cases.

SECT. 20. The writ of replevin

substantially in the same form that has been heretofore established and used in like cases, and the writ of reprisal shall be substantially in the same form with the writ heretofore called a writ of withernam.

SECT. 21. The foregoing provisions shall not preclude the defendant from his remedy on the replevin bond, or against the officer for the insufficiency of the sureties in the bond, to recover the value of the goods together with the loss or damage caused by the replevin, notwithstanding he has endeavored to recover the same by the writs of return and of reprisal, as before provided.

SECT. 22. If the officer to whom the writ of return is committed cannot find the beasts or other goods that were replevied, so as to deliver them to the defendant, he shall make a return of that fact upon the writ of return; and the defendant shall upon motion be entitled to a writ of reprisal, to take the beasts or goods of the plaintiff and deliver them to the defendant, to be held and disposed of according to law.

SECT. 23. No action shall be maintained against any person as surety in a replevin bond, unless the writ is served on him within one year after the final judgment in the action of replevin; or if the action is not entered, within one year after the end of the term at which the action of replevin ought to have been entered.

of return and reprisal.  
1789, 26.  
R. S. 118, § 88.

These proceedings not to bar action on bond, &c.  
R. S. 113, § 89.  
8 Met. 205.  
5 Allen, 348.

Writ of reprisal, when to be issued.  
R. S. 113, 87.

Limitation of suit against surety on replevin bond.  
R. S. 113, § 40.  
12 Mass. 270.  
14 Mass. 443.

## CHAPTER 144.

### OF HABEAS CORPUS, PERSONAL REPLEVIN, AND PERSONAL LIBERTY.

#### HABEAS CORPUS.

##### SECTION

1. Writ of habeas corpus;
2. in what cases not issuable as of right;
3. by whom to be issued;
4. application therefor, how made;
5. to be issued and returned forthwith;
6. form of in certain cases;
7. how signed and served.
8. Officer, &c., how to be named or described.
9. Party, how to be named or described.
10. Costs of service to be advanced when party is in legal custody.
11. Writ, when to be returned.
12. Substance of return.
13. Return to be signed, &c.
14. Party to be produced with writ.
15. Proceedings when party is sick, &c.
16. Writ, how returned and proceeded on in certain cases.
17. Examination to proceed without delay.
18. Mode of examination and trial.
19. Trial by jury on demand of either party, in case of fugitive from service.
20. Summoning, &c., of jurors in such case.
21. Claimant to state in writing facts upon which he relies. Burden of proof and rules of evidence.
22. Notice, when to be given to other persons;
23. when to be given to attorney-general.
24. Custody of party, pending examination.
25. Party, when and how to be bailed;
26. how, when committed on mesne process;
27. when to be remanded;
28. when to be discharged;
29. when discharged, not to be imprisoned again, unless, &c.
30. Habeas corpus and bail when person is committed in criminal case, &c.

##### SECTION

31. S. J. C., &c., may issue writs of habeas corpus in other cases, &c.
32. Any court may issue writs of habeas corpus in certain cases.
33. Penalty on officer refusing copy of warrant.
34. Proceedings against one refusing to obey writ.
35. Proceedings against sheriff, &c., in such case.
36. New precept to issue to another officer, &c.
37. Penalty for refusing.
38. Persons disobeying, &c., writ, liable as for contempt.
39. Penalty for removing or concealing prisoner.
40. Penalties not to bar action by party.
41. Superior court not to discharge person held, &c., by S. J. C.

#### PERSONAL REPLEVIN.

42. Writ of personal replevin, when to issue as of right;
43. issuing and return thereof;
44. by whom served;
45. form of;
46. shall not deliver from restraint, unless bond given, &c.
47. Officer responsible for sureties.
48. Plaintiff to recover cost, if discharged.
49. Defendant when to recover costs, &c.
50. When defendant to have judgment for redelivery of plaintiff.
51. Capias shall issue to take defendant in certain cases.
52. Defendant may deny the return, &c.
53. If guilty of secreting, to be committed to jail, &c.

## SECTION

54. Proceedings when plaintiff's body is produced by defendant, after return of sequestration, &c.  
 55. Either party may appeal to S. J. C.  
 56. Writ of personal replevin may be sued out, &c., in behalf of plaintiff, without express authority  
 57. Description of parties if names are unknown.

## PERSONAL LIBERTY.

58. Governor to appoint commissioners in each county to defend fugitives. Attorneys may act as counsel  
 59. Commissioners to be paid by commonwealth.  
 60. Persons holding office under this state not to issue warrants to arrest fugitives, &c.

## SECTION

61. State jails not to be used for detention of persons claimed as fugitives, &c.  
 62. Punishment and damages for removing, &c., or coming here with intention to remove, persons not held to service or labor.  
 63. Penalty on sheriffs, &c., arresting fugitives from labor;  
 64. on members of militia for acting in seizure of fugitives from service;  
 65. not to apply to acts of military obedience, &c.  
 66. Preceding sections not to apply to fugitives from justice.  
 67. United States judicial officers, &c., not to hold office under laws of this state, except, &c. Power of justice of the peace, while U. S. commissioner.

## HABEAS CORPUS.

(See 1863, 154.)

Writ of habeas corpus;  
 Const. ch. 6,  
 art. 7.  
 R. S. 111, § 1.  
 1855, 489, §§ 2,  
 20.  
 2 Mass. 553.  
 6 Mass. 273.  
 In what cases  
 not issuable as  
 of right.  
 R. S. 111, § 2.

2 Pick. 172.  
 2 Gray, 403.

by whom to be  
 issued.  
 R. S. 111, § 7, 8.  
 1855, 489, § 3.  
 19 Pick. 339.  
 2 Gray, 403.

application  
 therefor, how  
 made;  
 R. S. 111, § 3.

to be issued  
 and returned  
 forthwith.  
 1784, 72.  
 R. S. 111, § 4.

SECTION 1. Every person imprisoned or restrained of his liberty, except in the cases mentioned in the following section, may, as of right, and of course, prosecute a writ of habeas corpus, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint, if it proves to be unlawful.

11 Mass. 68, 67, 68. 10 Pick. 434. 7 Cush. 235. 10 Gray, 240. 14 Gray, 226. 12 Allen, 194.

SECT. 2. The following persons shall not be entitled, as of right, to demand and prosecute said writ:—

First. Persons committed for treason or felony, or on suspicion thereof, or as accessories before the fact to a felony, when the cause is plainly and specially expressed in the warrant of commitment:

Second. Persons convicted, or in execution upon legal process, civil or criminal:

Third. Persons committed on mesne process in any civil action on which they were liable to be arrested and imprisoned, unless when excessive and unreasonable bail is required.

SECT. 3. The writ may be issued by the supreme judicial court, superior court, probate court, or police court, or by a judge of either of said courts, and by any justice of the peace if no magistrate above named is known to him to be within five miles of the place where the party is imprisoned or restrained. It may be issued by either of said judges or justices, whether the place of imprisonment is within or without the county for which he is appointed.

SECT. 4. Application for the writ shall be made to the court or magistrate authorized to issue by the party for whose relief behalf, setting forth,—

First. The person by whom oned or restrained, naming if their names are known, and

Second. The cause or process according to the knowledge;

Third. If the imprisonment other process, a copy thereof appear that such copy has been sufficient reason a demand that

The facts set forth in the certificate the person making the application

SECT. 5. The court or magistrate shall without delay award an writ, partially in the form heretofore used, returnable forthwith, either before the

a justice of either of said courts, in term time or vacation, and whether the court is in session or not, and at such place as shall be designated in the writ. 1855, 489, § 3.  
1859, 291, § 1.  
See 1861, 91, § 1.

SECT. 6. In cases of imprisonment or restraint by a person not a sheriff, deputy-sheriff, coroner, or jailer, of this state, the writ shall be in the following form:— Writ, form of in certain cases;  
R. S. 111, § 5.  
1859, 291, § 2.

## COMMONWEALTH OF MASSACHUSETTS.

[SEAL.] To the sheriffs of our several counties, and their respective deputies,

We command you, that the body of \_\_\_\_\_ of \_\_\_\_\_ by \_\_\_\_\_ of \_\_\_\_\_, imprisoned and restrained of his liberty, as it is said, you take and have before \_\_\_\_\_ a justice of our supreme judicial court, (or superior court as the case may be,) at \_\_\_\_\_, immediately after the receipt of this writ, to do and receive what our said justice shall then and there consider concerning him in this behalf; and summon said \_\_\_\_\_, then and there to appear before our said justice, to show the cause of the taking and detaining of said \_\_\_\_\_, and have you there this writ with your doings thereon. Witness \_\_\_\_\_ at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_.

SECT. 7. When the writ is issued by the court in session, it shall be signed by the clerk, otherwise by the magistrate issuing the same, and it may in either case be served in any county, by a sheriff or deputy-sheriff of the same or any other county. how signed and served.  
R. S. 111, § 6.

SECT. 8. The person having the custody of the prisoner may be designated by his name of office, or his own name, or if such names are unknown or uncertain, he may be described by an assumed appellation, and any one upon whom the writ is served shall be deemed the person intended. Officer, &c., how to be named or described.  
R. S. 111, § 10.

SECT. 9. The person to be produced shall be designated by his name, if known, and if that is unknown or uncertain, he may be described in any other way so as to make known who is intended. Party, how to be named or described.  
R. S. 111, § 11.

SECT. 10. If the party is confined in a common jail, or in the custody of a civil officer, the court or magistrate granting the writ shall certify thereon the sum to be paid for the expense of bringing him from the place of imprisonment, and the officer shall not be bound to obey it unless that sum is paid or tendered to him. Costs of service to be advanced when party is in legal custody.  
R. S. 111, § 12.

SECT. 11. Any person to whom the writ is directed shall receive it, and upon payment or tender of the charges, if any, demandable for the execution of it, shall make due return thereof, within five days after receiving it. Writ, when to be returned.  
R. S. 111, § 13.

SECT. 12. The person in whose custody the prisoner is found shall state in writing to the court or justice before whom the writ is returnable, plainly and unequivocally,— Substance of return.  
R. S. 111, § 14.  
107 M. 154

First. Whether he has or has not the party in his custody or power, or under restraint:

Second. If he has the party in his custody or power, or under restraint, the authority at large, and the true and whole cause of such imprisonment or restraint, with a copy of the writ, warrant, or other process, if any, upon which the party is detained: and,

Third. If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, particularly to whom, at what time, for what cause, and by what authority, such transfer was made.

SECT. 13. The return or statement shall be signed by the person making it, and shall be sworn to by him, unless he is a sworn public officer and makes the return in his official capacity. Return to be signed, &c.  
R. S. 111, § 15.

SECT. 14. The person making the return or statement shall at the same time bring the body of the party, if in his custody or power, or under his restraint, according to the command of the writ, unless prevented by the sickness or infirmity of the party. Party to be produced with writ.  
R. S. 111, § 16.  
See 1861, 91, § 3.

SECT. 15. When from the sickness or infirmity of the party he cannot without danger be brought to the place appointed for the return of Proceedings when party is sick, &c.

R. S. 111, § 17.

the writ, that fact shall be stated in the return; and if it is proved to the satisfaction of the judge, he may proceed to the jail or other place where the party is confined and there make his examination; or he may adjourn the same to another time, or make such other order in the case as law and justice require.

Writ, how returned and proceeded on in certain cases.  
R. S. 111, § 9.

SECT. 16. If the court to which the writ is returnable is adjourned before it is returned, the return shall be made before any one of the justices of the court; and if the writ is in any case returned before one judge at a time when the court is in session, he may adjourn the case into the court, to be there heard and determined in like manner as if the writ had been returned into court.

Examination to proceed without delay.  
R. S. 111, § 18.

SECT. 17. When the writ is returned, the court or judge shall without delay proceed to examine the causes of the imprisonment or restraint; but the examination may be adjourned from time to time as circumstances require.

Mode of examination and trial.  
R. S. 111, § 21.  
10 Gray, 241.

SECT. 18. The party imprisoned or restrained may deny any of the facts set forth in the return or statement, and may allege any other facts that may be material in the case; and the court or judge shall, except as provided in the following section, proceed in a summary way to examine the causes of the imprisonment or restraint, hear the evidence produced by any person interested or authorized to appear both in support of such imprisonment or restraint and against it, and thereupon to dispose of the party as law and justice require.

Trial by jury on demand of either party, in case of fugitive from service.  
1855, 489, § 4.  
See § 66.  
See Ch. 172, § 15.  
See 1861, 91, § 2.

SECT. 19. When it appears by the return of the officer or otherwise that the person whose restraint or imprisonment is in question is claimed to be held to service or labor in another state, and to have escaped from such service or labor, the court or justice shall, on the application of any party to the proceeding, order a trial by jury as to any facts stated in the return of the officer, or alleged, and may admit said person to bail in a sum not exceeding two thousand dollars. In such case, issue may be joined by a general denial of the facts alleged, the plea may be not guilty, and the jury shall have the right to return a general verdict, and the same discretion as juries have in the trial of criminal cases; and the finding of a verdict of not guilty shall be final and conclusive.

Summoning, &c., of jurors.  
1855, 489, § 5.  
See § 66.

SECT. 20. When a trial by jury is ordered, the court or justice, unless a jury is already in attendance, shall by warrant command the sheriff or his deputy to summon a jury, in the manner provided in chapter forty-three, to attend at the time and place stated in the warrant; at which time and place they shall be empanelled, and having elected a foreman by ballot, the issue so framed shall be submitted to them for their determination. If one jury disagrees, the issue may be submitted to another jury or continued to the next term, at the discretion of the court. In every case of disagreement another jury may be summoned and qualified as above provided, forthwith or at a future day, in the discretion of the court or justice, until a verdict is finally rendered. If a person summoned as a juror fails to attend without sufficient cause, he shall pay a fine of fifty dollars. And if, by reason of challenges or otherwise, there is not a full jury of the persons summoned, the officer attending the hearing shall return some suitable person or persons to supply the deficiency.

Claimant to state in writing facts upon which he relies. Burden of proof and rules of evidence.  
1855, 489, § 6.  
See § 66.

SECT. 21. If a claimant appears to demand the custody or possession of the person for whose benefit the writ is sued out, he shall state in writing the facts on which he relies, with precision and certainty. Neither the claimant, nor the alleged fugitive, nor any person interested in his alleged obligation to service or labor, shall be permitted to testify at the trial of the issue; and no confessions, admissions, or declarations, of the alleged fugitive against himself shall be given in evidence. Upon every question of fact involved in the issue, the burden of proof shall be on the claimant; and the facts alleged and necessary to be established must

be proved by the testimony of at least two credible witnesses, or other legal evidence equivalent thereto, and by the rules of evidence known and secured by the common law, except as modified by the provisions of this section. No ex parte deposition or affidavit shall be received in proof in behalf of the claimant, and no presumption shall arise in his favor from proof that the alleged fugitive or any of his ancestors had been actually held as a slave, without proof that such holding was legal.

SECT. 22. When it appears from the return of the writ or otherwise, that the party is detained on any process under which another person has an interest in continuing his imprisonment or restraint, the party shall not be discharged until sufficient notice has been given to such other person or his attorney, if within the state, or within thirty miles of the place of examination, to appear and object to such discharge if he thinks fit.

Notice, when to be given to other persons;  
R. S. 111, § 19.

SECT. 23. When it appears from the return of the writ or otherwise, that the party is imprisoned on a criminal accusation, he shall not be discharged until sufficient notice has been given to the attorney-general or other attorney for the commonwealth, that he may appear and object to such discharge if he thinks fit.

when to be given to attorney-general.  
R. S. 111, § 20.

SECT. 24. Until judgment is given, the court or judge may remand the party, or may bail him to appear from day to day, or may commit him to the sheriff of the county, or place him under such other care and custody as the circumstances of the case may require.

Custody of party, pending examination.  
R. S. 111, § 26.

SECT. 25. If the party is detained for a cause or offence for which he is bailable, he shall be admitted to bail if sufficient bail is offered, and if not, he shall be remanded with an order of the court or judge expressing the sum in which he shall be held to bail, and the court at which he shall be required to appear; and any justice of the peace may, at any time before the sitting of said court, bail the party pursuant to such order.

Party, when and how to be bailed;  
R. S. 111, § 28.  
12 Allen, 201.

SECT. 26. If the party is committed on mesne process in a civil action for want of bail, and if it appears that the sum for which bail is required is excessive and unreasonable, the court or judge shall decide what bail is reasonable, and shall order that on giving such bail the party shall be discharged.

how, when committed on mesne process;  
R. S. 111, § 24.

SECT. 27. If the party is lawfully imprisoned or restrained, and is not entitled to be enlarged on giving bail, he shall be remanded to the person from whose custody he was taken, or to such other person or officer as by law is authorized to detain him.

when to be remanded;  
R. S. 111, § 25.

SECT. 28. If no legal cause is shown for the imprisonment or restraint, the court or judge shall discharge the party therefrom.

when to be discharged;  
R. S. 111, § 22.

SECT. 29. No person who has been discharged upon a habeas corpus shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof, or committed for want of bail by some court of record having jurisdiction of the cause; or unless after a discharge for defect of proof, or for some material defect in the commitment in a criminal case, he is again arrested on sufficient proof, and committed by legal process.

when discharged, not to be imprisoned again, unless, &c.  
R. S. 111, § 34.

SECT. 30. When a person is committed to jail on a criminal accusation for want of bail, any justice of the superior court or of a police court, or any two justices of the peace and of the quorum, may admit him to bail in like manner as might have been done by the court or magistrate who committed him; and said justices, respectively, may issue a writ of habeas corpus and cause such prisoner to be brought before them when it is necessary for the purpose expressed in this section.

Habeas corpus and bail in criminal cases, &c.  
R. S. 87, § 3.  
R. S. 111, § 36.  
1869, 196.  
2 Gray, 406.  
5 Allen, 501.  
See 1862, 159.

SECT. 31. Nothing contained in this chapter shall be construed to restrain the power of the supreme judicial court or superior court, or any

S. J. C., &c., may issue writs of habeas corpus in

other cases, &c.  
Const. ch 1, § 8,  
arts. 10, 11.  
R. S. 111, § 85.  
1869, 193.  
12 Allen, 201.

Any court may  
issue writs of  
habeas corpus in  
certain cases.  
R. S. 111, § 37.

Penalty on offi-  
cer refusing copy  
of warrant.  
R. S. 111, § 27.  
1862, 312.

Proceedings  
against one re-  
fusing to obey  
writ.  
R. S. 111, § 28.

Proceedings  
against sheriff,  
&c., in such case.  
R. S. 111, § 29.

New precept to  
issue to another  
officer, &c.  
R. S. 111, § 30.  
1862, 312.

Penalty for re-  
fusing.  
R. S. 111, § 31.  
1862, 312.

Persons disobey-  
ing, &c., writ,  
liable as for con-  
tempt.  
1843, 264.

Penalty for re-  
moving or con-  
cealing prisoner.  
R. S. 111, § 32.  
1862, 312.

Penalties not to  
bar action by  
party.  
R. S. 111, § 33.

justice of either of said courts, to issue a writ of habeas corpus at discretion, and thereupon to bail a person for whatever cause he is committed or restrained, or to discharge him, as law and justice require; except only persons committed by the governor and council, the senate, or the house of representatives, in the manner and for the causes mentioned in the constitution.

SECT. 32. Nothing contained in this chapter shall be construed to restrain the power of any court or magistrate to issue a writ of habeas corpus, when necessary to bring before them a prisoner for trial in any criminal case lawfully pending in the same court or before such magistrate; or to bring in a prisoner to be examined as a witness in a suit or proceeding, civil, or criminal, pending in such court or before such magistrate, when the personal attendance and examination of the witness is deemed necessary for the attainment of justice.

SECT. 33. An officer, who refuses or neglects for six hours to deliver a true copy of the warrant or process by which he detains a prisoner, to any person who demands such copy and tenders the fees therefor, shall forfeit and pay to such prisoner the sum of two hundred dollars, to be recovered in an action of tort.

SECT. 34. If a person to whom such writ of habeas corpus is directed refuses to receive the same, or neglects to obey and execute it according to the provisions of this chapter, and no sufficient excuse is shown for such refusal or neglect, the court or judge before whom the writ was returnable shall proceed forthwith by process of attachment, as for a contempt, to compel obedience to the writ and to punish the person guilty of the contempt.

SECT. 35. If such attachment is issued against a sheriff or his deputy, it may be directed to a coroner, or other person to be designated therein, who shall have full power to execute the same; and if the sheriff or his deputy is to be committed upon such process, he may be committed to the jail of any county other than his own.

SECT. 36. Upon such refusal or neglect of the person to whom the writ of habeas corpus is directed, the court or judge may also issue a precept to any officer or other person to be designated therein, commanding him to bring forthwith, before such court or judge, the person for whose benefit the writ of habeas corpus was issued, and the prisoner shall be thereupon discharged, bailed, or remanded, in like manner as if he had been brought in upon the writ of habeas corpus.

SECT. 37. Every person guilty of such refusal or neglect to receive and execute a writ of habeas corpus, shall moreover forfeit to the party aggrieved thereby the sum of four hundred dollars, to be recovered in an action of tort.

SECT. 38. Whoever resists the service of the writ of habeas corpus, or disobeys the same when served, shall be liable to attachment, as for a contempt of the court or judge before whom the writ is returnable.

SECT. 39. If any one who has in his custody, or under his power, a person entitled to a writ of habeas corpus, whether a writ has been issued or not, transfers such prisoner to the custody, or places him under the power or control of, another person, or conceals him, or changes the place of his confinement, with intent to elude the service of such writ or to avoid the effect thereof, the person so offending shall forfeit to the party aggrieved thereby the sum of four hundred dollars, to be recovered in an action of tort.

SECT. 40. The recovery of any penalty imposed by the foregoing provisions of this chapter shall not bar an action at common law for false imprisonment, or for a false return to the writ of habeas



corpus, or for any other injury or damage sustained by the aggrieved party.

SECT. 41. Nothing contained in this chapter shall be construed to authorize the superior court or any justice thereof to order the discharge of a person committed or held upon any process issued by the supreme judicial court or any justice thereof.

Superior court not to discharge person held, &c., by S. J. C. 1837, 221, § 1. 8 Met. 102.

#### PERSONAL REPLEVIN.

SECT. 42. If a person is imprisoned, restrained of his liberty, or held in duress, unless in the custody of some public officer of the law by force of a lawful warrant or process, civil or criminal, issued by competent authority, he shall be entitled, as of right, to the writ of personal replevin, and to be thereby delivered in the manner hereinafter provided.

Writ of personal replevin, when to issue as of right; 1837, 221, § 1. 8 Met. 102.

SECT. 43. The writ shall be issued from and returnable to the superior court in the county in which the plaintiff is confined, and shall be issued fourteen days at least before the return day.

Issuing and return thereof; 1837, 221, § 2. 1855, 449.

SECT. 44. It shall be directed to the sheriff of the county, or his deputy, or to any of the coroners thereof, and shall be served without delay by either to whom it is delivered.

by whom served; 1837, 221, § 3.

SECT. 45. It shall be in the following form, viz. :—

form of; 1837, 221, § 4. 1859, 196.

#### COMMONWEALTH OF MASSACHUSETTS.

\_\_\_\_\_, ss. To the sheriff of our county of \_\_\_\_\_ or his deputy, or either of the [L. S.] coroners thereof, Greeting.

We command you, that justly and without delay, you cause to be replevied C. D. who (as it is said) is taken and detained at \_\_\_\_\_, within our said county, by the duress of G. H., that said C. D. may appear at our superior court next to be holden at \_\_\_\_\_, within our county aforesaid, then and there in our said court to demand right and justice against said G. H., for the duress and imprisonment aforesaid, and to prosecute his replevin as the law directs:

Provided, said C. D. shall before his deliverance give bond to said G. H. in such sum as you shall judge reasonable, and with two sureties at least having sufficient within your county, with condition to appear at our said court to prosecute his replevin against said G. H., and to have his body there ready to be redelivered, if thereto ordered by the court; and to pay all such damages and costs as shall be then and there awarded against him. Then, and not otherwise, are you to deliver him. And if said C. D. is by you delivered at any day before the sitting of our said court, you are to summon said G. H. by serving him with an attested copy of this writ, that he may appear at our said court to answer to said C. D.

Witness, L. S., Esq., at B \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

A. B., Clerk.

SECT. 46. No person shall be delivered from his imprisonment or restraint by force of such writ, until he gives bond in the manner expressed in the preceding section. The bond shall be returned with the writ like a bail bond, and left in the clerk's office, to be delivered to the defendant upon demand.

shall not deliver from restraint, unless bond given, &c. 1837, 221, § 5.

SECT. 47. The officer who serves the writ shall be answerable for the insufficiency of the sureties in the bond, in like manner as he is answerable for taking insufficient bail in a civil action, and the bond may be approved in the same manner as a bail bond.

Officer responsible for sureties. 1837, 221, § 6. 1857, 141, § 22.

SECT. 48. If it appears that the plaintiff was unlawfully imprisoned or restrained, he shall be discharged, and recover costs as well as damages for the imprisonment and detention.

Plaintiff to recover cost, if discharged. 1837, 221, § 7.

SECT. 49. If the plaintiff does not maintain his action, the defendant shall have judgment for costs and for any damages he has sustained by reason of the replevin.

Defendant when to have judgment for recover costs, &c. 1837, 221, § 8.

SECT. 50. If it appears that the defendant is bail for the plaintiff, or is entitled to the custody of the plaintiff, as his child, ward, servant, apprentice, or otherwise, he shall have judgment for a redelivery of the body, to be held and disposed of according to law.

When defendant to have judgment for redelivery of plaintiff. 1837, 221, § 9.

Capias shall issue to take defendant in certain cases. 1837, 221, § 10.

Defendant may deny the return, &c. 1837, 221, § 11. 1852, 312.

Defendant, if guilty of secreting, to be committed to jail, &c. 1837, 221, § 12.

Proceedings when plaintiff's body is produced by defendant, after return of sequestration, &c. 1837, 221, § 13.

Either party may appeal to S. J. C. 1837, 221, § 14. 1840, 87, §§ 4, 5.

Writ of personal replevin may be sued out, &c., in behalf of plaintiff, without express authority. 1837, 221, § 15.

Description of parties, if names are unknown. 1837, 221, § 16.

Governor to appoint commissioners in each county to defend fugitives. Attorneys may act as counsel. 1855, 489, § 17. See § 68. (R.) *Repealed* 1869, 24, § 2.

Commissioners to be paid by commonwealth. 1855, 489, § 18. See § 68.

SECT. 51. If it appears from the return of the writ that the defendant has secreted or conveyed away the plaintiff's body, so that the officer cannot deliver him, the court shall on motion issue a capias to take the defendant's body, and him safely keep, so that he may be had at the then next term of the court, to traverse the return of the writ; but the defendant may give bail for his appearance as in a civil case, in such sum as the officer may judge reasonable.

SECT. 52. At the term at which the capias is returned, the defendant may deny by answer the return on the writ, and if it appears on the trial that he is not guilty of secreting or conveying away the plaintiff as set forth in the return, he shall be discharged and recover his costs.

SECT. 53. If the defendant does not traverse the issue is found against him issued, and he shall thereupon be committed in close custody until he produces the him to be dead. If the defendant sues after committal as aforesaid, the court shall order a jury to try the fact; and if the death is found, he shall be discharged.

SECT. 54. If, at any time after such return, the defendant produces the body which the writ of personal replevin was issued upon, the court shall deliver the body to the plaintiff, giving bond agreeably to the conditions of the writ. If the plaintiff gives such bond the plaintiff shall be committed to custody; and in either case the suit shall be continued as if the plaintiff had been delivered on the writ.

SECT. 55. Either party may appeal from the judgment of the court founded upon matter of law apparent on the record, as in civil actions; and the appeal shall be carried up, and be disposed of as in civil cases, had been no appeal.

SECT. 56. The writ may be sued on by the plaintiff, and may be prosecuted by the defendant, without express power for that purpose; but the writ shall not be issued during the pendency of the suit, unless as the court directs for the payment of the costs against the plaintiff.

SECT. 57. If the name of the defendant is unknown or uncertain, he may be described by a writ of personal replevin or any process in relation to the writ of habeas corpus.

#### PERSONAL LIBERTY.

SECT. 58. (R.) [The governor, by and with the advice of the council, shall appoint in every county a learned in the law, who shall in their respective counties, when a person is arrested or seized, or in danger of being a fugitive from service or labor, on being so notified, faithfully use all lawful means to protect and secure to him a fair and impartial trial, and to enforce the provisions of this chapter; and any person who is seized by the alleged fugitive may also be seized.]

SECT. 59. (R.) [The commissioners, clerks, and officers' fees, and the costs of protection and defence of any person so seized, together with the reasonable charges

services as attorneys and counsel, shall be reimbursed by the common-wealth.]

(R.) Repealed  
1868, 24, § 2.

SECT. 60. (R.) [No person while holding any office of honor, trust, or emolument, under the laws of this state, shall, in any capacity, take cognizance of any case, issue any warrant or other process, or grant any certificate, under or by virtue of an act of congress approved the twelfth day of February in the year one thousand seven hundred and ninety-three, entitled "An Act respecting fugitives from justice and persons escaping from the service of their masters," or under or by virtue of an act of congress, approved the eighteenth day of September in the year one thousand eight hundred and fifty, entitled "An Act to amend, and supplementary to 'An Act respecting fugitives from justice and persons escaping from the service of their masters,'" or shall, in any capacity, serve such warrant or other process. Any justice of the peace who offends against the provisions of this section, by directly or indirectly acting in such cases, shall forfeit a sum not exceeding one thousand dollars, or be imprisoned in jail not exceeding one year for each offence.]

Persons holding office under this state not to issue warrants to arrest fugitives, &c.  
1843, 69, §§ 1, 8.  
1855, 489, §§ 1, 9.  
See § 66.  
(R.) Repealed  
1868, 24, § 2.

SECT. 61. (R.) [No jail, prison, or other place of confinement, belonging to or used by the state or any county therein, shall be used for the detention or imprisonment of any person accused or convicted of an offence created by either of the acts of congress mentioned in the preceding section, or accused or convicted of obstructing or resisting any process, warrant, or order, issued under either of said acts, or of rescuing, or attempting to rescue, any person arrested or detained under any of the provisions of either of said acts, nor for the imprisonment of a person arrested on mesne process or execution in a suit for damages or penalties accruing, or claimed to accrue, in consequence of aid rendered to any fugitive escaping from service or labor.]

State jails not to be used for detention of persons claimed as fugitives, &c.  
1843, 69.  
1855, 489, § 19.  
See § 66.  
(R.) Repealed  
1868, 24, § 2.

SECT. 62. (R.) [Whoever removes from the limits of this state, or assists in removing therefrom, or comes into the state with the intention of removing or assisting in the removing therefrom, or procures or assists in procuring to be so removed, any person being in the peace thereof, who is not "held to service or labor" by the "party" making "claim," or who has not "escaped" from the "party" making "claim," or whose "service or labor" is not "due" to the "party" making "claim," within the meaning of those words in the constitution of the United States, on the pretence that such person is so held or has so escaped, or that his "service or labor" is so "due," or with the intent to subject him to such "service or labor," shall be punished by fine not less than one thousand, nor exceeding five thousand, dollars, and by imprisonment in the state prison not less than one, nor exceeding five, years. And any person sustaining wrong or injury by any proceeding punishable as aforesaid, may also maintain an action and recover damages therefor.]

Punishment and damages for removing, &c., or coming here with intention to remove, persons not held to service or labor.  
1855, 489, §§ 7, 8.  
See § 66.  
1861, 91.  
(R.) Repealed  
1868, 24, § 2.

SECT. 63. (R.) [Any sheriff, deputy-sheriff, jailer, coroner, constable, or other officer, of this state, or of the police of any city or town, or any district, county, city, or town, officer, or any officer or other member of the volunteer militia of this state, who hereafter arrests, imprisons, detains, or returns, or aids in arresting, imprisoning, detaining, or returning any person for the reason that he is claimed or adjudged to be a fugitive from service or labor, shall be punished by fine not less than one thousand, and not exceeding two thousand, dollars, and by imprisonment in the state prison not less than one, nor exceeding two, years.]

Penalty on sheriffs, &c., arresting fugitives from labor.  
1843, 69, §§ 2, 8.  
1855, 489, §§ 1, 15.  
See § 66.  
1861, 91.  
(R.) Repealed  
1868, 24, § 2.

SECT. 64. (R.) [The volunteer militia shall not act in any manner in the seizure, detention, or rendition, of a person for the reason that he is claimed or adjudged to be a fugitive from service or labor. Any member thereof who offends against the provisions of this section shall be punished by fine not less than one thousand, and not exceeding two thousand, dollars, and by imprisonment in the state prison for not less than one, nor more than two, years.]

on members of militia for acting in seizure of fugitives from service.  
1855, 489, § 18.  
See § 66.  
See Ch. 104, § 5.  
(R.) Repealed  
1868, 24, § 2.

Penalties.  
1858, 175, § 2.  
(R.) Repealed  
1868, 24, § 2.

Proceeding sec-  
tions not to apply  
to fugitives from  
justice.  
1855, 489, § 21.  
(R.) Repealed  
1868, 24, § 2.

United States ju-  
dicial officers,  
&c., not to hold  
office under laws  
of this state.  
1858, 175, § 1.  
(R.) Repeal and  
substitute.  
1868, 24.

SECT. 65. (R.) [The penalti-  
tions shall not apply to any act  
performed by an officer or priva

SECT. 66. (R.) [Nothing in  
tions nineteen, twenty, and twen  
much of the act of congress of  
one thousand seven hundred a  
from justice.]

SECT. 67. (R.) [No person b  
the United States, or the office  
the United States, shall hold a  
and laws of this state, except th  
the peace, while holding the c  
States circuit court, shall have  
issue any process, civil or crimi  
or hear and try any cause, ci  
state.]

## CHAI

### OF AUDITA QUERELA, CERTIOR

#### AUDITA QUERELA.

##### Sections

1. *Audita querela*, how sued out, &c. ;
2. to what court returnable.
3. Proceedings.
4. Judgment,
5. when for plaintiff, shall bar new action.
6. Plaintiff, how discharged from prison ;
7. after surrender, to be held, &c.

#### CERTIORARI.

8. Writs of *certiorari*: to issue from S. J. C.
9. Proceedings of other tribunals quashed  
affirmed, &c.
10. Court may allow costs.
11. Limitation of time within which writ  
issue.
12. Court may issue injunction after writ  
*audita querela*, and *certiorari*, &c.

#### AUDI

*Audita querela*,  
how sued out,  
&c. ; 1780, 47.  
R. 8. 112, § 1.  
5 Met. 228.  
18 Gray, 1.

to what court  
returnable.  
R. 8. 112, § 2.  
1859, 196.

Proceedings.  
R. 8. 112, §§ 3, 6.  
1840, 67, §§ 4, 5.  
Judgment.  
R. 8. 112, § 4.  
4 Mass. 486.  
10 Mass. 101.  
12 Mass. 270.  
14 Mass. 443.

SECTION 1. The writ of *aud*  
like an original writ of attachme  
shall be substantially the same  
this state. 11 Gray, 280.

SECT. 2. When the writ is  
any proceedings upon a judgme  
and returnable to the court in  
other cases it may be brought in  
might be brought between the  
and returnable to the superior c

SECT. 3. The proceedings i  
other matters, shall be the sam  
are applicable.

SECT. 4. The court shall h  
issue of law or fact, or upon the  
shall render judgment as law an

SECT. 5. When the writ is brought to set aside or annul any proceedings under an execution, the plaintiff, if he prevails, shall recover recompense for the damages suffered by said proceedings, and the judgment on the *audita querela* shall be a bar to any other action thereafter brought for the same damages.

Judgment, when for plaintiff, shall bar new action.  
R. S. 112, § 6.

SECT. 6. If the plaintiff is imprisoned on the execution or other process complained of, the court in which the suit is pending may enlarge him upon his giving bond to the defendant in such sum as the court shall order, with two or more sureties having sufficient within the county and approved by the court, conditioned that if final judgment on the *audita querela* is rendered for the defendant, the plaintiff shall within thirty days thereafter surrender himself to the jailer or other officer by whom he was imprisoned, to be detained in custody under the former execution or process, or shall within that time pay the sum due on the former execution or process, together with such costs as may be recovered by the defendant.

Plaintiff, how discharged from prison;  
R. S. 112, §§ 7, 8.

SECT. 7. If the plaintiff thus surrenders himself, he shall be in custody under the execution or other process on which he was imprisoned, in like manner as if the writ of *audita querela* had not been brought.

after surrender, to be held, &c.  
R. S. 112, § 9.  
17 Mass. 168.

## CERTIORARI. 1873 c 355

SECT. 8. Writs of *certiorari* to correct errors in proceedings that are not according to the course of the common law, shall be issued from and returnable to the supreme judicial court according to the practice heretofore established, and subject to such further regulations as shall be made from time to time by the general rules of the court.

Writs of *certiorari* to issue from S. J. C.  
112 M. 206, 212

SECT. 9. When the proceedings of any tribunal are brought up by a writ of *certiorari*, the court may quash or affirm such proceedings, or enter such judgment as the court below should have rendered, or make such order, judgment, or decree, in the premises, as law and justice require.

R. S. 112, § 21.  
8 Cush. 529.  
2 Allen, 463.  
5 Allen, 13, 17.  
9 Allen, 208.  
Proceedings of other tribunals quashed or affirmed, &c.  
116 M. 83  
112 M. 212

SECT. 10. Upon application for a *certiorari*, and also on the final adjudication when a *certiorari* is granted, the court may, in its discretion, award costs against any party who appears to maintain or object to the proceeding in question.

1858, 109.  
16 Gray, 258.  
6 Allen, 131.  
108 Mass. 120.  
Court may allow costs.  
R. S. 112, § 22.  
4 Mass. 565.  
11 Mass. 485.

SECT. 11. No writ of *certiorari* shall be issued, unless application is made therefor within six years next after the proceeding complained of.

Limitation.  
R. S. 112, § 23.

SECT. 12. At any time after the issuing of a writ of *audita querela* or *certiorari*, or pending an application for a *certiorari*, the court may issue any writ of injunction which the nature of the case and justice and equity in their judgment require.

Court may issue injunction, &c.  
16 Gray, 258.  
See 1870, 119.

## MANDAMUS. 1873 c 355

SECT. 13. When a writ of *mandamus* issues, the person required to make return thereto shall make his return to the first writ, and the person suing the writ may by an answer traverse any material facts contained in such return, or demur thereto. If the party suing the writ maintains the issue on his part, his damages shall be assessed, and a judgment rendered, that he recover the same with costs, and that a peremptory writ of *mandamus* be granted; otherwise the party making the return shall recover his costs. No action shall be maintained for a false return to a writ of *mandamus*.

Writ of *mandamus*; return; proceedings  
1852, 812, §§ 88, 89.  
6 Mass. 464.  
104 Mass. 501.

SECT. 14. The court may make rules, not only on a petition for the writ, but upon and after the issuing of the first writ, calling upon any person other than the party to whom the writ is prayed to be or has been directed, having or claiming any right or interest in the subject matter, to show cause against the issuing of the writ. If such person

Court may make rules before and after first writ, &c. Admittance of third party.  
1852, 812, § 40.  
20 Pick. 486.

appears he shall be heard in such manner as the court may direct, and in proper cases may be allowed to frame and sign the return to the first writ, and to stand as the real party in the proceedings.

Proceedings not to abate on death, &c., of third party.  
1862, 312, § 41.

SECT. 15. If a third person is admitted as is provided in the preceding section, the proceedings shall not abate or be discontinued by the death, resignation, or removal from office by lapse of time, or otherwise, of the person to whom the writ was directed, and any peremptory writ shall be directed to his successor.

## QUO WARRANTO.

Application for *quo warranto*.  
1862, 312, § 42.  
9 Cush. 596.  
1 Gray, 370.  
8 Gray, 116.  
6 Allen, 221.  
104 Mass. 241.

when made and heard:  
1862, 312, § 43.  
See 1871, 386.  
to be heard summarily;  
1862, 312, § 44.

where to be filed.  
Notice, &c.  
1862, 312, §§ 45, 46.

Court may issue injunction.  
1862, 312, § 46.

Attorney-general may appear, &c.  
1862, 312, § 46.

Judgment for complainant when attorney-general does not appear;  
1862, 312, § 47.

for defendant.  
Costs.  
1862, 312, § 48.

Other duties of attorney-general, and rights of others not affected.  
1862, 312, § 50.  
5 Mass. 280.  
8 Gray, 124.

SECT. 16. Any person whose private right or interest has been injured, or is put in hazard by the exercise by any private corporation, or persons claiming to be a private corporation, of a franchise or privilege not conferred by law, whether such person is a member of such corporation or not, may apply to the supreme judicial court for leave to file an information in the nature of a *quo warranto*.

SECT. 17. The application may be made and heard at a law or jury term in any county where the court is in session.

SECT. 18. The court shall take order for a summary hearing of the parties, and if there appears probable cause to believe that the party complained of has exercised a franchise or privilege not conferred by law, and that thereby the private right or interest of the complainant has been injured, or is put in hazard, leave shall be granted to file the information.

SECT. 19. The information shall be filed in the county where the defendant has its principal place of business. A copy of the information, with an order of notice returnable and to be served when and as the court may direct, shall be served on the defendant and on the attorney-general.

SECT. 20. The court, when leave is given to file such information, or at any time before final judgment, may issue a writ of injunction restraining the defendant, and its managers, servants, and agents, from exercising the franchise or privilege in question, until the further order of the court.

SECT. 21. The attorney-general, when he has good reason to believe there has been a usurpation of a franchise or privilege not conferred by law, may intervene and demand a judgment of fine and forfeiture. In such case he shall have the control of all future proceedings, and the court shall enter such judgment as the principles of the common law may require, but the complainant shall no longer be responsible for costs.

SECT. 22. If the attorney-general has not intervened, and it is determined that the defendant has exercised a franchise or privilege not conferred by law, no judgment of forfeiture shall be entered; but the judgment shall be, that the corporation, or the persons claiming to be a corporation, be perpetually excluded from such franchise or privilege, and that the directors, managers, or agents, by whom the usurpation was made, pay the costs, to be recovered by the complainant.

SECT. 23. If it is adjudged that the defendant has not exercised any franchise or privilege not conferred by law, the defendant shall recover against the complainant the same costs as are allowed in actions at law.

SECT. 24. Nothing herein contained shall affect the duty of the attorney-general to proceed *ex officio* in all cases in which he might have heretofore so proceeded by law, nor deprive any person of the right to file an information respecting the election or admission of an officer or member of a corporation.

# CHAPTER 146.

## OF WRITS OF ERROR AND REVIEW.

### WRITS OF ERROR.

#### SECTION

1. Writs of error to issue from S. J. C.
2. Judgments of superior court may be revised on writ of error except, &c.
3. Judgments not to be reversed for certain defects, &c.;
4. nor for mistake in venue;
5. nor unless writ is brought within six years after judgment;
6. or six years after new suit on judgment.
7. Bond required for stay of execution.
8. Sum and sureties, how determined.
9. Proceedings when bond is filed.
10. What costs for party prevailing.
11. Writ of error in criminal cases in superior court.
12. Writs may be brought at any time, and entered in any county, &c.
13. Writs of error in capital cases;
- 14, 15. in other criminal cases.
16. On reversal for error in sentence, court may render judgment anew, &c.
17. Costs when defendant discharged.
18. Proceedings upon writs of error.

### WRITS OF REVIEW.

19. Review of civil actions.

#### SECTION

20. Writ of review allowed as of right to absent defendant, &c.;
21. may be granted on petition in certain cases.
22. Where petition may be filed, and trial had. If not granted, costs.
23. Trial to be as court orders.
24. Superior court may grant reviews in certain cases, &c.
25. Writ of review, how sued out;
26. form of.
27. Plaintiff to produce copies.
28. Writ, how to be served.
29. Defendant's property may be attached thereon.
30. Cause to be tried on former issue, if any;
31. otherwise, upon pleadings on review. Evidence.
32. Judgment.
33. Costs.
34. Judgment, when for reduced or greater sum.
35. Case of replevin and of set-off.
36. One of two or more defendants may review.
37. Writs, &c., when to be indorsed.
38. Defendants petitioning for a stay of execution, to give security, &c.

### WRITS OF ERROR.

**SECTION 1.** Writs of error in civil and criminal cases may issue of course out of the supreme judicial court, in vacation as well as in term time, and shall be returnable to the same court.

**SECT. 2.** Questions of law, (except upon pleas in abatement,) and final judgments in civil actions in the superior court, may be reëxamined upon a writ of error, and reversed or affirmed, in the supreme judicial court held for the same county, for any error in law or in fact, except as hereinafter provided. When the judgment is reversed, the court shall render such judgment as the superior court should have rendered.

**SECT. 3.** A judgment in a civil action shall not be reversed for any defect or imperfection in matter of form which might by law have been amended; nor because it is not in conformity with the allegations of the parties, if it is in conformity with the verdict; nor shall any error in law in a civil action in which the defendant appeared and a verdict was rendered, except such as occurs after verdict, be assigned in a writ of error. But nothing herein contained shall prevent either party from assigning any error affecting the jurisdiction of the court.

**SECT. 4.** Judgment shall not be arrested or reversed on a writ of error in a civil action, by reason of any mistake respecting the venue of the action, whether it is local on account of its subject matter or any or all of its parties.

**SECT. 5.** Judgment in a civil case shall not be reversed or avoided for any error or defect, unless the writ of error is sued out within six years after the entering of the judgment, except as provided in the following section.

**SECT. 6.** If an action of contract or writ of *scire facias* is brought on a judgment, a writ of error to reverse the judgment may be sued

Writs of error to issue from S. J. C.  
R. S. 112, § 10.  
7 Gray, 378.

Judgments of superior court may be revised on writ of error except, &c.  
R. S. 82, § 20.  
1840, 87, § 4.  
1859, 196.  
7 Met. 580.  
10 Met. 172.

Judgments not to be reversed for certain defects, &c.;

See Ch. 129, § 79.

nor for mistake in venue;  
1862, 312, § 78.

nor unless writ is brought within six years after judgment;  
R. S. 112, § 19.  
1842, 54, § 1.

or six years after new suit on judgment.

R. S. 112, § 20.  
1863, § 12.

Bond required  
for stay of exe-  
cution.  
R. S. 112, § 11.  
1 Mass. 156.

Sum and sure-  
ties, how deter-  
mined.  
R. S. 112, § 12.

Proceedings,  
when bond is  
filed.  
R. S. 112, § 13.

What costs for  
party prevailing.  
R. S. 112, § 14.  
1 Mass. 81, 208,  
342, 411, 443.  
4 Mass. 436.  
6 Mass. 4.  
12 Cush. 78.

Writ of error in  
criminal cases in  
superior court.  
R. S. 82, § 31.  
1840, 87, § 4.  
1842, 64.

Writs may be  
brought at any  
time, and entered  
in any county,  
&c.  
1842, 64, §§ 1, 2.  
5 Met. 334.  
1 Cush. 306.

Writs of error in  
capital cases;  
R. S. 112, § 16.  
5 Cush. 366.

In other crim-  
inal cases;  
R. S. 112, § 17.

same subject.  
R. S. 112, § 18.

On reversal for  
error in sen-  
tence, court  
may render  
judgment anew,  
&c. 1851, 87.  
9 Cush. 279.

Costs when  
defendant is  
discharged.  
1842, 64, § 3.  
1 Cush. 306.

Proceedings upon  
writs of error.  
R. S. 112, § 15.  
3 Mass. 386.  
16 Mass. 384.  
5 Cush. 366.

out at any time within six years after the bringing of such action or writ.

SECT. 7. A writ of error shall not operate to stay or supersede the execution in a civil action, unless the plaintiff in error or some person in his behalf gives bond to the defendant, with one or more sufficient sureties, conditioned that the plaintiff shall prosecute his suit to effect, and pay and satisfy such judgment as may be rendered thereon.

SECT. 8. The sufficiency of the sureties and the amount of the bond shall be determined by any justice of the supreme judicial court or the clerk from whose office the writ is issued, according to such general rules as the court may from time to time establish.

SECT. 9. Such bond shall be filed in the clerk's office for the use of the defendant, and no execution shall be thereafter issued upon the judgment during the pendency of the writ of error. If execution has been already issued, the clerk shall make and sign a certificate of the issuing of the writ of error and the filing of the bond, and after notice of such certificate to the officer holding the execution, all further proceedings thereon shall be stayed.

SECT. 10. The party prevailing on a writ of error in a civil action shall be entitled to his costs against the adverse party, and if the judgment is affirmed, the court shall adjudge to the defendant in error damages for his delay, not less than at the rate of six per cent. and not exceeding twelve per cent. a year, on the amount recovered by the former judgment; and may in their discretion award to the defendant double costs.

SECT. 11. Questions of law (except upon pleas in abatement) and final judgments in all criminal cases in the superior court may be re-examined and reversed or affirmed upon a writ of error in the supreme judicial court, for any error in law or in fact.

SECT. 12. Writs of error upon judgments in criminal cases may be brought at any time after judgment is rendered, and may be entered in any county. When the writ is returned, the court shall without delay proceed to examine the case; but the examination may be adjourned from time to time as circumstances may require.

SECT. 13. A writ of error upon a judgment for a capital offence shall not issue, unless allowed by one of the justices of the supreme judicial court after notice given to the attorney-general or other attorney for the commonwealth.

SECT. 14. Writs of error upon judgments in all other criminal cases shall issue of course, but they shall not stay or delay the execution of the judgment or sentence, unless they are allowed by one of the justices of the supreme judicial court, with an express order thereon for a stay of proceedings on the judgment or sentence.

SECT. 15. When a stay of proceedings is ordered as provided in the preceding section, the judge may at the same time make such order as the case requires, for the custody of the plaintiff in error, or for letting him to bail; or the party may upon a writ of habeas corpus procure his enlargement upon giving bail, if entitled thereto.

SECT. 16. When a final judgment in a criminal case is reversed by the supreme judicial court on account of error in the sentence, the court may render such judgment therein as should have been rendered, or may remand the case for that purpose to the court before which the conviction was had.

SECT. 17. If the defendant in a criminal case is discharged on a writ of error, the legal costs shall be borne by the commonwealth.

SECT. 18. The proceedings upon writs of error, as to the assignment of errors, the *scire facias*, pleadings, judgment, and all other matters not herein provided for, shall be according to the course of the common law, as modified by the practice and usage in this state and general rules made by the supreme judicial court.

107th. 114

1875. 69, § 3



## WRITS OF REVIEW.

SECT. 19. Final judgments in civil actions may be reëxamined and tried anew upon writs of review, as provided in this chapter, and not otherwise.

16 Gray, 579.

10 Allen, 348.

Review of civil actions:  
R. S. 99, § 1.  
19 Pick. 64.

SECT. 20. When judgment is rendered as provided in chapter one hundred and twenty-six, upon the default of a defendant upon whom service has not been made by reason of his being out of the state or his residence being unknown, he may at any time within one year after the judgment as of right, without any petition therefor, sue out of the court in which the judgment was rendered a writ of review.

allowed as of right to absent defendant, &c.;  
R. S. 92, § 4.  
R. S. 99, § 17.  
See 1862, 188, § 2.

SECT. 21. If judgment is rendered, either by the supreme judicial court, or superior court, in a civil action in any manner, the supreme judicial court, except when a review is prosecuted as of right, may on petition grant a review on such terms as it deems reasonable: *provided*, that if the judgment complained of was rendered in the absence of the petitioner, and without his knowledge, the petition for review shall be filed within one year after he first had notice of the judgment, otherwise within one year after the judgment was rendered.

106 Mass. 514.

may be granted on petition in certain cases.  
R. S. 92, § 5.  
R. S. 99, §§ 18, 19, 20.  
1859, 196.  
1 Met. 288.  
3 Gray, 420, 509.  
10 Gray, 92.  
8 Allen, 28, 568.  
104 Mass. 367, 371.

SECT. 22. The petition may be presented to the court when sitting in any county, or in vacation to any justice thereof, and the order of notice issued thereon may be made returnable in such county as the court shall in the same order direct; but the review, if granted, shall be had in the county in which the former judgment was rendered, or in the county in which the original action would have been tried if it had been carried to the supreme judicial court by appeal or otherwise. If the review is not granted, the court may award to the respondent his reasonable costs.

Where petition may be filed, and trial had.  
If not granted, costs.  
R. S. 99, §§ 21, 24.  
4 Met. 376.

SECT. 23. Reviews granted by the supreme judicial court shall be tried as the court shall order, either in that or the superior court.

Trial to be as court orders.  
R. S. 99, § 26.

SECT. 24. The superior court may concurrently with the supreme judicial court grant reviews of its own judgments in all cases in which a review can be granted according to the provisions of this chapter; and may grant reviews of judgments rendered before a justice of the peace or police court, in any case in which a review might be granted if the judgment had been rendered in the superior court. The proceedings on the petitions for such reviews, and upon the trial thereof, if granted, shall be conducted in the same manner as is prescribed in like cases in the supreme judicial court.

Superior court may grant reviews in certain cases, &c.  
R. S. 99, §§ 26, 27, 28.  
1859, 196.  
2 Cush. 1.  
8 Allen, 28.

SECT. 25. The writ shall be sued out of the clerk's office of the court in which the action is to be tried, and shall be in the form heretofore used, except as is hereinafter provided.

Writ, how sued out;  
R. S. 99, § 2.

SECT. 26. It shall not be necessary to recite at length the declaration and other proceedings in the original suit, but the writ of review may be substantially as follows, viz:—

form of.  
R. S. 99, § 3.  
1862, 312.  
1856, 449.

"summon A. to answer to B. in the review of an action of contract (or tort) brought by said A. against said B.," "in which action said A. by the consideration of the justices of our court, begun and held at C. within and for our said county of M. on the — day of —, recovered judgment against said B. for the sum of — dollars debt," or "damages, and — dollars costs, which judgment said B. says is wrong and erroneous;"

or the former judgment may be briefly described in any manner deemed sufficiently certain according to such rules as the courts prescribe.

SECT. 27. The plaintiff in review shall produce and file in court certified copies of the writ, judgment, and all proceedings in the former suit, and the originals or copies of all depositions and other papers used and filed therein.

Plaintiff to produce copies.  
R. S. 99, § 4.

SECT. 28. The writ shall be served in the same manner as an origi-

Writ of review,

1874, 33

how to be served.  
R. S. 99, § 5.

Defendant's property may be attached thereon.  
R. S. 99, §§ 6, 12.

Cause to be tried on former issue, if any;  
R. S. 99, § 7.  
1 Mass. 242.  
5 Mass. 488.  
3 Gray, 420, 509.  
99 Mass. 194.  
(11 A. 283)  
otherwise,  
upon pleadings on review.  
Evidence.  
R. S. 99, §§ 8, 9.  
3 Cush. 239.

Judgment.  
R. S. 99, § 10.  
(11 A. 283)  
Costs.  
R. S. 99, § 11.  
4 Mass. 614.  
3 Allen, 472.  
Judgment, when for reduced or greater sum.  
R. S. 99, §§ 13, 14.  
19 Pick. 66.  
11 Met. 266.  
2 Cush. 11.  
5 Allen, 582.  
102 Mass. 122.  
(11 A. 283)  
Case of replevin and of set-off.  
R. S. 99, § 15.

One of two or more defendants may review.  
R. S. 99, § 16.  
3 Allen, 127.  
(11 A. 283)

Writs, &c., when to be indorsed.  
R. S. 99, § 29.

Defendants petitioning for a stay of execution, to give security, &c.  
R. S. 99, §§ 12, 22, 23.  
1856, 136.  
8 Cush. 302, 428.  
1 Allen, 265.  
3 Allen, 472.  
10 Allen, 946.  
14 Allen, 66.

nal writ, except that when the defendant is not an inhabitant of the state, or not found therein, the writ may be served on the person who appeared as his attorney in the original suit, and the court may continue the cause, to enable the absent party to appear and answer.

SECT. 29. If the writ is sued out by the original plaintiff, he may cause the defendant's goods and estate to be attached as they might have been in the original action, and for this purpose the writ of review may be so framed as to require an attachment in the common form and that the defendant be summoned. No attachment made, or bail taken, in the original suit shall be liable to satisfy the judgment rendered on the review.

SECT. 30. If an issue of fact was joined in the original suit, the cause shall be tried on the review upon the same issue, except that the court may allow amendments of the original declaration and other pleadings, as might have been done in the original suit; and if a different issue is joined in consequence of such amendment, the cause shall be tried upon such new issue.

SECT. 31. If the former judgment was rendered without an issue, the parties shall plead or answer upon the review in like manner as they might have done in the original suit, and the cause shall be tried upon any issue of fact or law joined upon such pleadings, or answer; and each party may produce any legal evidence, whether produced in the former suit or not.

SECT. 32. Judgment shall be given in like manner as if the parties had brought their several writs of review.

SECT. 33. The prevailing party shall recover costs, unless the court in granting the review imposed on the petitioner terms respecting cost.

SECT. 34. If the sum recovered by the plaintiff in the original suit for debt or damages is reduced on the review, the original defendant shall have judgment and execution for the difference with costs; or, if the former judgment is not satisfied, one judgment may be set off against the other, and an execution issue for the balance. If the original plaintiff recovers a greater sum for debt or damages than was awarded to him in the original suit, he shall have judgment and execution for the excess.

SECT. 35. In actions of replevin and in actions in which a set-off is filed, the original defendant shall be considered, as to every thing contained in this chapter, like a plaintiff in other actions, so far as it respects any damages awarded to him, either in the original suit or upon the review.

SECT. 36. If judgment is recovered against several defendants in the original action, any one or more of them may review in like manner as if he or they had been the only defendants; and if the sum recovered in the original suit for debt or damages is increased or reduced, the court shall take such order respecting the further proceedings as may be necessary to carry into effect the two judgments, according to the rights of all parties.

SECT. 37. Writs and petitions for reviews shall be indorsed in the same manner as original writs; and all regulations concerning the indorsement of original writs shall apply to writs and petitions for review.

SECT. 38. After the rendition of judgment in a civil action, if the execution has not been satisfied, the court or justice, upon the petition of the defendant, may order a stay or supersedeas of it, if the petitioner gives to the adverse party security to the satisfaction of the court or justice, with condition that he will forthwith prosecute a review to final judgment and satisfy such execution as may be issued against him on the review. The execution shall not otherwise be stayed or superseded by the writ of review.

1875-62-99  
3,4-

## CHAPTER 147.

## OF REFERENCE TO ARBITRATION BY AGREEMENT BEFORE A JUSTICE OF THE PEACE.

## SECTION

1. Controversies may be submitted.
2. Form of submission.
3. Submission of all demands, how construed ;
4. varied according to agreement.
5. Time within which award shall be made.
6. Neither party to revoke submission.
7. Award by majority, when valid.

## SECTION

8. Award to be delivered to the court ;
9. at what term to be returned.
10. Jurisdiction of the court. Judgment.
11. Power of arbitrators as to costs.
12. No appeal allowed. Writ of error may be brought.
13. Fees of the justice, &c.

SECTION 1. All controversies which might be the subject of a personal action at law or suit in equity, may be submitted to the decision of one or more arbitrators, in the manner provided in this chapter.

6 Cush. 611. 11 Gray, 485. 1 Allen, 211, 212. 6 Allen, 888. 100 Mass. 319.  
2 Gray, 407. 18 Gray, 300. 4 Allen, 17, 20. 7 Allen, 476. 101 Mass. 48, 359.

Controversies may be submitted.  
R. S. 114, § 1.  
5 Greenl. 88.  
8 Mass. 1.

SECT. 2. The parties shall appear in person, or by their lawful agents or attorneys, before a justice of the peace, and there sign and acknowledge an agreement in substance as follows :—

Know all men, that \_\_\_\_\_, of \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, have agreed to submit the demand, a statement whereof is hereto annexed, (and all other demands between them, as the case may be,) to the determination of \_\_\_\_\_, and \_\_\_\_\_, the award of whom, or the greater part of whom, being made and reported within one year from this day to the superior court for the county of \_\_\_\_\_, the judgment thereon shall be final ; and if either of the parties neglects to appear before the arbitrators, after due notice given them of the time and place appointed for hearing the parties, the arbitrators may proceed in his absence. Dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

Form of submission.  
R. S. 114, § 2.  
1859, 196.  
5 Mass. 489, 524.  
6 Cush. 108.  
10 Cush. 114.  
8 Gray, 425.  
11 Gray, 425.  
106 Mass. 365.  
See 1868, 157, § 2.  
113 N. 67

The justice shall subjoin to the agreement his certificate, in substance as follows :—

\_\_\_\_\_, ss. \_\_\_\_\_, \_\_\_\_\_. Then the above named \_\_\_\_\_, and \_\_\_\_\_, personally appeared (or, the above named \_\_\_\_\_, personally, and said \_\_\_\_\_, by said \_\_\_\_\_, his attorney, appeared, as the case may be,) and acknowledged the above instrument by them signed to be their free act. Before me, \_\_\_\_\_, Justice of the Peace.

SECT. 3. An agreement to submit all demands shall include only such as might be the subject of a personal action at law or of a suit in equity.

5 Greenl. 88. 8 Mass. 1. 5 Cush. 611. 7 Allen, 477.

Submission of all demands, how construed ;  
R. S. 114, § 4.

SECT. 4. If a specific demand is submitted to the exclusion of others, it shall be set forth in the statement annexed to the agreement ; otherwise it shall not be necessary to annex any statement of a demand, and the submission may be of all demands between the parties, or of all demands which either has against the other. The submission may be varied in this respect in any other manner, according to the agreement of the parties.

varied according to agreement.  
R. S. 114, § 3.

SECT. 5. The time within which the award shall be made and reported may be varied according to the agreement of the parties, but no award made after that time shall have any legal effect or operation, unless made upon a recommitment by the court to which it is reported.

Time within which award shall be made.  
R. S. 114, § 6.  
4 Allen, 17.

SECT. 6. Neither party shall have power to revoke the submission without the consent of the other ; and if either neglects to appear after due notice, the arbitrators may proceed to hear and determine the cause.

Neither party to revoke submission.  
R. S. 114, § 5.

SECT. 7. All the arbitrators shall meet and hear the parties, but an award by a majority of them shall be valid, unless the concurrence of the whole is expressly required in the submission.

6 Mass. 493. 14 Mass. 143.

Award by majority, when valid ;  
R. S. 114, § 11.  
4 Allen, 17.

SECT. 8. The award shall be delivered by one of the arbitrators to the court designated in the agreement, or shall be enclosed and sealed

to be delivered to the court.

R. S. 114, § 7.

Award, at what term to be returned.

R. S. 114, § 10.

5 Mass. 489, 524.

14 Mass. 148.

7 Met. 316.

18 Gray, 800.

Jurisdiction of the court.

Judgment.

R. S. 114, §§ 8, 9.

1 Cush. 339.

4 Allen, 17, 20.

5 Allen, 566.

6 Allen, 835.

7 Allen, 38.

Power of arbitrators as to costs.

R. S. 114, § 12.

6 Greenl. 247.

2 Mass. 164.

7 Allen, 38.

Appeal and writ of error.

R. S. 114, § 13.

1840, 87, §§ 4, 5.

1859, 196.

5 Met. 287.

6 Met. 280.

5 Cush. 311.

6 Allen, 835.

100 Mass. 319.

Fees of the justice, &c.

R. S. 114, § 14.

1/3 73 67

by them, and transmitted to the court, and shall remain sealed until opened by the clerk.

SECT. 9. It may be returned at any term or session of the court held within the time limited in the submission, and the parties shall attend without any express notice for that purpose; but the court may require actual notice to be given to either party before it proceeds to act upon the award.

SECT. 10. The court shall have cognate and may proceed thereon, as if it had jurisdiction by a rule of court; and may accept of the same arbitrators for a rehearing. When the court, judgment shall be rendered by referees.

SECT. 11. If there is no provision in the award as to costs and expenses, the arbitrators may make such award as they judge reasonable, including a commission; but the court may reduce the sum charged if unreasonable.

SECT. 12. An appeal shall be allowed to the superior court, founded on matter of fact or law in any award made under this chapter; or writ of error for any error in law or fact. The judicial court shall thereupon render such judgment as ought to have rendered.

SECT. 13. The fees of the justice for acknowledgment shall be forty cents, and for like services with respect to an award.

## CHAPTER

[Sec 1869, 88]

### OF IMPROVING MEADOWS

Section	Page
1. Improvement of meadows, &c., by proprietors.	14.
2. Petition to superior court, and notice thereon.	15.
3. Commissioners may be appointed. Power and duty of;	16.
4. may cause dams and dikes to be erected, &c.;	17.
5. may employ persons to perform the work;	18.
6. may apportion expense among proprietors;	19.
7. may appoint a collector thereof.	20.
8. Penalty on collector for withholding money.	21.
9. Compensation of commissioners and collector.	22.
10. Return by commissioners.	23.
11. Apportionment of expense.	24.
12. Provision in case of mortgage.	25.
13. Commissioners may make or open dams on land of other persons.	26.

Improvement of meadows, &c., by proprietors.  
R. S. 115, § 1.

SECTION 1. When any meadow, swamp, or low land is held by several proprietors, and the water runs or flows the same, or remove obstructions

therefrom, such improvements may be effected under the direction of commissioners in the manner herein provided.

SECT. 2. Such proprietors, or the greater part of them in interest, may apply by petition to the superior court for the county where the lands or any part of them lie, setting forth the proposed improvements and the reasons therefor; and the court shall cause notice of the petition to be given in such manner as it may judge proper, to any proprietors who have not joined in the petition, that they may appear and object thereto.

SECT. 3. If upon hearing the parties it appears that the improvements proposed will be for the general advantage of the proprietors, the court may appoint three, five, or seven suitable persons, as commissioners, who shall be sworn to the faithful discharge of their duties; shall view the premises, notify parties concerned, hear them as to the best manner of making the improvements, and prescribe the measures to be adopted for that purpose.

SECT. 4. They shall, according to the tenor of the petition and the order of court, cause dams or dikes to be erected on the premises at such places and in such manner as they shall direct; may order the land to be flowed thereby for such periods of each year as they shall deem most beneficial; and cause ditches to be opened on the premises, and obstructions in any rivers or streams leading therefrom to be removed; and they shall meet from time to time as may be necessary to cause the work to be completed according to their directions.

SECT. 5. They may employ suitable persons to erect the dams or dikes, or perform the other work, under their direction, for such reasonable wages as they may agree upon; unless the proprietors themselves do the same in such time and manner as the commissioners shall direct.

SECT. 6. They shall apportion the whole charge and expense of the improvements, and of executing the commission, among the proprietors of the lands, having regard to the quantity, quality, and situation, of each person's part thereof, and to the benefit that he will derive from the improvements; and shall assess the same upon the proprietors.

SECT. 7. They may appoint a collector of the moneys assessed, and shall give him a warrant to collect, pay over, and account for, the same, to such person as they may appoint. The collector shall have the same power and proceed in like manner in collecting the assessments, as provided for collecting town taxes.

SECT. 8. If the collector neglects for twenty days after being thereto required by the commissioners to account for and pay over the money he has collected, he shall be liable to pay to the commissioners the whole amount committed to him for collection, to be recovered by them in an action of contract; and the money so recovered, after deducting the expenses of recovery, shall be applied and accounted for by the commissioners as if it had been collected and paid over by the collector pursuant to his warrant.

SECT. 9. The collector shall be allowed such compensation for his services as may be agreed upon between him and the commissioners; and the commissioners shall be allowed such compensation for their services as may be ordered by the court.

SECT. 10. The commissioners shall, as soon as may be after the completion of the business, make a return to the court of their doings under the commission, including an account of all money assessed and collected by their order, and of the disbursement thereof.

SECT. 11. When it appears to the commissioners that part of the land is held by a tenant for life or years, they shall determine how much of the sum apportioned on that part of the premises shall be paid by such tenant, and how much by the landlord or reversioner; and shall assess the same accordingly, unless the parties concerned agree on an appor-

22 Pick. 422.  
11 Met. 325.

*with a view to a*  
Petition to superior court, and notice thereon.  
R. S. 115, § 2.  
1859, 196.  
14 Mass. 387.  
11 Met. 325.  
8 Allen, 7.  
12 Allen, 240.

*1876-228. Almost*  
Commissioners may be appointed.  
Power and duty of;  
R. S. 115, §§ 3, 4.

may cause dams and dikes to be erected, &c.;  
R. S. 115, § 5.

may employ persons to perform the work;  
R. S. 115, § 6.

may apportion expense among proprietors;  
R. S. 115, § 7.

may appoint a collector thereof.  
R. S. 115, § 8.  
5 Met. 360.  
4 Gray, 150.

Penalty on collector for withholding money.  
R. S. 115, § 9.  
1852, 812.

Compensation of commissioners and collector.  
R. S. 115, § 10.

Return by commissioners.  
R. S. 115, § 11.  
7 Pick. 207.

Apportionment of expense.  
R. S. 115, § 12.

Provision in case  
of mortgage.  
R. S. 115, § 13.

tionment; and every such tenant, landlord, and reversioner, shall be considered a proprietor.

SECT. 12. If any part of the land is mortgaged, the mortgagor or mortgagee, in possession, shall be considered as the proprietor; and all sums paid by the mortgagee by order of the commissioners, shall be allowed to him as sums paid by him for improvements are by law to be allowed.

Commissioners  
may make or  
open dams on  
land of other per-  
sons.  
R. S. 115, § 14.  
11 Met. 321.

SECT. 13. When the commissioners find it necessary or expedient to reduce or raise the waters for the purpose of obtaining a view of the premises, or for the more convenient or expeditious removal of obstructions, they may open the flood-gates of any mill, or make other needful passages through or around the dam thereof, or erect a temporary dam on the land of any person not a party to the proceedings; and may maintain such dam or passages for the water as long as may be necessary for the purposes aforesaid.

Damages, how  
ascertained and  
paid.  
R. S. 115, § 15.  
11 Met. 325.

SECT. 14. All damages thus occasioned shall be estimated and determined by the commissioners, unless agreed on between them and the parties concerned; and shall be paid by the commissioners out of the money to be assessed and collected by them as before provided.

Persons aggrieved  
may appeal.  
R. S. 115, § 16.  
5 Met. 368.

SECT. 15. If a person, whether a party to the proceedings or otherwise interested therein or affected thereby, is aggrieved by any doing of the commissioners, he may appeal to the court at any time after their appointment and before the end of the term next following that at which the return is made.

Proceedings  
thereon.  
R. S. 115, § 17.  
5 Met. 363.

SECT. 16. The court upon such appeal may affirm, reverse, or alter any adjudication or order of the commissioners, and make such order therein as law and justice require. All questions of fact arising upon the hearing of the appeal, shall on motion of either party be tried by a jury in such manner as the court shall direct.

Notice to persons  
who are not  
parties.  
R. S. 115, § 18.

SECT. 17. The commissioners before proceeding to open flood-gates or make other passages for water through or around any dam, or to erect a dam on the land of any person not a party to the proceedings, shall give him seasonable notice in writing of their intention, to enable him to appear before them and object thereto; and if he appeals from their determination, and gives notice in writing of his appeal to the commissioners or any of them, they shall suspend all proceedings upon his land until the appeal is determined: *provided*, that the appeal be entered at the court held next after the expiration of seven days from the time of claiming the same.

Appeal. Ex-  
ceptions.  
R. S. 15, § 19.  
1840, 87, §§ 4, 7.  
1859, 190.  
5 Met. 363.

SECT. 18. An appeal shall be allowed from any order or judgment of the court founded on matter of law apparent on the record, in any proceedings under this chapter; and any person aggrieved by any opinion, direction, or judgment, of the court, in any matter of law, may allege exceptions thereto, which shall be reduced to writing and allowed and signed by the presiding judge, and shall be removed into the supreme court. Sec. 14, hundred and fourteen and one

#### CONSTRUCTION OF

Towns, &c., own-  
ing swamps, &c.,  
authorized to  
construct roads,  
&c., to.  
1855, 104, § 1.  
See § 25.  
§ Allen, 7.

SECT. 19. Any town, city, or village, having the ownership of low mineral deposits, that on acco persons or occupied as a h drained, or used, in the ordina highway, may be authorized t and railway, to such places, in

Petition for im-  
provements,

SECT. 20. The party desir a petition therefor with the

diction the premises are situated, setting forth the names of the persons interested, if known to the petitioner, and also, in detail, the nature of the proposed improvement and the situation of the adjoining lands; which petition shall be accompanied with a bond, satisfactory to said commissioners, for the payment of expenses incurred in the prosecution of the application.

to commissioners.  
1855, 104, § 2.

SECT. 21. The commissioners at their first meeting after the filing of the petition and bond, shall give at least three weeks' public notice of the time and place of meeting to consider the petition, in some newspaper printed in the county; and if there is no such paper, in a newspaper printed in an adjacent county; they shall further give notice to the mayor of any city and the clerk of any town in which the premises are situated.

Petition for im-  
provements,  
notice of;  
1855, 104, § 3.

SECT. 22. They shall meet at the time and place appointed, and after examination, inspection, and the hearing of evidence, shall determine whether the improvement prayed for is necessary, and if so, shall proceed to lay out and establish the same in such manner as shall do as little injury as practicable; and shall assess the amount of damages which in their opinion the proprietor of the adjacent lands will sustain. They shall apportion the damages equitably among all parties to be benefited, having regard to the benefits each will receive; and such award shall be deemed conclusive upon each of the parties charged with such payment, unless an appeal is taken within the period of one year.

proceedings on.  
1855, 104, § 4.

SECT. 23. Any party aggrieved by the award may appeal therefrom, and thereupon like proceedings shall be had as are provided in chapter forty-three, for persons aggrieved in the laying out of highways.

Appeal.  
1855, 104, § 6.

SECT. 24. When it is necessary to repair any improvement thus constructed, a majority of the persons benefited by it may cause such repairs to be made, and compel contributions from each person benefited, on the basis of the award.

Repairs of im-  
provements.  
1855, 104, § 6.

SECT. 25. When the premises mentioned in section nineteen are situated entirely in one town or city, the petition may be made to the selectmen or mayor and aldermen thereof, who shall proceed thereon in all respects as above provided for county commissioners upon such petitions, except that they need not give notice to their town or city.

Petition may be  
made to select-  
men, &c.;  
1857, 292, § 1.

SECT. 26. The petition under the preceding section shall be filed in the office of the town or city clerk before proceedings are had thereon; and together with the order or award thereon shall be recorded in said office within two months after the same is made.

to be filed and  
recorded with de-  
crees.  
1857, 292, § 2.

SECT. 27. The selectmen or mayor and aldermen shall each receive for services upon such petitions two dollars a day, and the clerk shall receive for recording petitions and orders the same fees as for mortgages of personal property.

Fees of select-  
men, &c  
1857, 292, §§ 3, 4.

SECT. 28. A party aggrieved by any order, award, or refusal of the selectmen or mayor and aldermen herein, may complain to the county commissioners at any meeting held within one year thereafter; and the commissioners may thereupon proceed in all respects as though the petition were originally made to them.

Appeal to county  
commissioners.  
1857, 292, § 2.

## CHAPTER 149.

## OF THE SUPPORT AND REGULATION OF MILLS.

## ERECTION AND REGULATION OF MILLS.

## SECTION

1. Mills and dams on streams not navigable.
2. Not allowed to injury of existing mill or mill-sites.
3. Height of dam.
4. Damages recovered on complaint.
5. Substance of complaint.
6. Notice to mill owner;
7. by whom served.
8. Answer of respondent.
9. Further pleadings and trial.
10. Judgment for respondent. Costs;
11. for complainant. Jury.
12. Appeal and proceedings.
13. Warrant for jury. Jurors, how drawn, &c.
14. Proceedings.
15. Trial may be in court if parties so agree, &c.
16. Damages, how estimated.
17. Verdict for respondent;
18. for complainant.
19. Jury to establish height of dam, &c.;
20. to assess annual damages, and also a sum in gross.
21. Complainant may take sum in gross.
22. If not paid, respondent to have no benefit.
23. Complainant may take annual damages;
24. shall have lien therefor on mill, &c.
25. Action therefor, against whom.
26. Premises may be sold on execution.
27. Sale, how far effectual.
28. Right of redemption.
29. Existing mills and dams not affected.
30. New trial.
31. Action at common law.
32. Costs.
33. Compensation for services at trial, &c.
34. New complaint by either party, but gross damages assessed only once in ten years;
35. who may maintain;
36. when to be brought. Tender.
37. Mill owners may tender greater compensation, &c.
38. Land owner may offer to accept less, &c.
39. Offer, by or to whom made, &c.

## SECTION

40. Effect of agreement, if signed and recorded.
41. Verdict not to bar new complaint, &c.
42. Respondent may make tender in court.
43. Judgment upon tender. Acceptance may be for past or future damages.
44. Owners of lands may join in complaint and have separate damages.
45. Pleas in abatement. New defendants.
46. Complaint not to abate by death of parties. Remedy for abatement or reversal of judgment.

## REGULATION OF DAMS.

47. County commissioners to view, &c.;
48. may direct alterations, &c. To record result of examination.
49. Upon neglect of owner to repair, &c., commissioners to remove. Dam not to be rebuilt, except, &c.
50. If dam cannot be removed, commissioners to raise, &c.
51. Costs, &c., by whom paid.
52. Jurisdiction to compel alterations, &c.

## REPAIRING AND REBUILDING MILLS.

53. Repair of mills owned by several persons.
54. Meeting of proprietors, how called.
55. Notice thereof, how served and returned.
56. Majority in interest may decide.
57. Each proprietor liable.
58. Remedy by lien on rents, or action.
59. Guardian of proprietor may act for him.
60. Apportionment between tenant and reversioner.
61. Case of a mortgagee in possession;
62. tenant in tail.
63. How suits between proprietors brought.
64. Chapter not to affect agreements, &c.

## DUTIES AND COMPENSATION OF MILLERS.

65. Millers to keep scales, &c., and weigh grain, if required, under penalty.
66. What toll allowed.

## ERECTION AND REGULATION OF MILLS.

SECTION 1. Any person may erect and maintain a water mill, and a dam to raise water for working it, upon and across any stream not navigable, upon the terms and conditions, and subject to the regulations hereinafter expressed.

11 Met. 570.	8 Cush. 115, 558.	18 Gray, 149.	97 Mass. 71, 402.	100 Mass. 281
12 Met. 149.	2 Gray, 407.	2 Allen, 850, 855.	99 Mass. 452, 486,	102 Mass. 454
6 Cush. 305.	9 Gray, 177.	18 Allen, 10.	574.	108 Mass. 154

SECT. 2. No such dam shall be erected to the injury of any mill lawfully existing, either above or below it, on the same stream, nor to the injury of any mill-site on the same stream, on which a mill or mill-dam has been lawfully erected and used, unless the right to maintain a mill on such last-mentioned site has been lost or defeated by abandonment or otherwise; nor shall any mill-dam be hereafter erected or raised to the injury of any such mill-site which has been occupied as such by the owner thereof: *provided*, that such owner within a reasonable time after

1873 & 144  
Mills and dams on streams not navigable.  
R. S. 116, § 1.  
5 Pick. 222.  
22 Pick. 312.  
28 Pick. 219.

Not allowed to injury of existing mill or mill-sites.  
R. S. 116, § 2.  
1841, 18, § 1.  
11 Mass. 698.  
17 Mass. 299.  
10 Pick. 357.  
22 Pick. 312.  
12 Met. 149.  
8 Cush. 117.



commencing such occupation completes and puts in operation a mill for the working of which the water of such stream shall be applied; nor shall any mill or dam be placed on the land of any person, without such grant, conveyance, or authority, from the owner, as would be necessary by the common law if no provision relating to mills had been made by statute.

SECT. 3. The height to which the water may be raised, and the length of time, or period, for which it may be kept up in each year, shall be liable to be restricted and regulated by the verdict of a jury. 7 Gray, 296.

SECT. 4. A person whose land is overflowed or otherwise injured by such dam, may obtain compensation therefor upon his complaint before the superior court for the county where the land or any part thereof lies: *provided*, that no compensation shall be awarded for damage sustained more than three years before the institution of the complaint.

11 Met. 570. 2 Cush. 341. 5 Cush. 537. 4 Gray, 581. 13 Gray, 148. 12 Allen, 89.  
12 Met. 182, 188. 4 Cush. 152, 181. 6 Cush. 170, 308. 7 Gray, 296. 10 Allen, 420. 102 Mass. 458.

SECT. 5. The complaint shall contain such description of the land alleged to be flowed or injured, and such statement of the damage, that the record of the case will show with sufficient certainty the matter heard and determined therein.

SECT. 6. The complaint may be filed in the court in term time, or in the clerk's office in vacation, and in either case notice thereof shall be given to the owner or occupant of the mill, by delivering to him, or leaving at his dwelling house, an attested copy of the complaint; or if he is not found within the state and has no dwelling house therein, by leaving such copy at the mill in question fourteen days at least before the complaint is to be heard; or the complainant may fourteen days at least before the sitting of the court to which his complaint is brought, cause the owner or occupant of such mill or dam to be served with an attested copy of the complaint, by delivering or leaving such copy in like manner as when the complaint is filed as aforesaid.

SECT. 7. The notice shall be served by any officer authorized to serve any other civil process between the same parties.

SECT. 8. The respondent may answer in bar, that the complainant has no estate or interest in the land alleged to be flowed or injured, or that the respondent has a right to maintain his dam for an agreed price, or without any compensation, or any other matter which may show that the complainant cannot maintain the suit; but he shall not answer that the land described is not injured by the dam.

12 Cush. 269.

4 Gray, 681.

7 Gray, 296.

14 Gray, 448.

SECT. 9. If any plea or answer is filed by the respondent, the replication and other pleadings, and the trial of the issue, whether of law or of fact, shall be conducted in like manner as in actions at the common law.

SECT. 10. If an issue is decided in favor of the respondent, or if the complainant becomes nonsuit or discontinues, the respondent shall be entitled to his costs, to be taxed as in civil actions.

SECT. 11. If the owner or occupant of the mill or dam after due notice is defaulted, or offers no legal objection, or an issue is decided in favor of the complainant, the court shall issue a warrant for a jury to hear and determine the matter of the complaint.

SECT. 12. Either party may appeal as in other civil actions, but if the judgment of the supreme judicial court is in favor of the complainant, the cause shall be remitted and the court shall proceed therein in like manner as if the judgment had been rendered in that court.

SECT. 13. The warrant shall be directed and served, and the jurors shall be drawn, summoned, and returned, in the manner provided in chapter forty-three with respect to a jury returned on the complaint of a person aggrieved by the laying out of a highway, and the jurors shall be required to attend under a like penalty.

12 Allen, 89.  
102 Mass. 458.

17m. 213

Height of dam.  
R. S. 116, § 3.  
12 Met. 142, 149.  
4 Cush. 549.  
8 Cush. 118.

Damages, how recovered.  
R. S. 116, § 4.

1840, 87, § 2.

22 Pick. 312.

2 Met. 507.

3 Met. 359.

4 Met. 428.

10 Met. 207.

Substance of complaint.

R. S. 116, § 5.

9 Pick. 62.

Notice to mill owner;  
R. S. 116, §§ 6, 7.

6 Cush. 171.

by whom served.

R. S. 116, § 7.

Answer of respondent.

R. S. 116, § 8.

4 Greenl. 322.

8 Mass. 184.

6 Mass. 398.

17 Mass. 76.

10 Met. 37.

Further pleadings and trial.

R. S. 116, § 9.

10 Met. 37.

9 Gray, 182.

Judgment for respondent.

Costs;

R. S. 116, § 10.

for complainant. Jury.

R. S. 116, § 11.

See § 15.

Appeal and proceedings.

R. S. 116, § 12.

1840, 87, §§ 4, 5.

6 Mass. 398.

10 Allen, 420.

13 Allen, 274.

Warrant for jury. Jurors, how drawn, &c.

R. S. 116, § 13.

2 Cush. 346.

4 Gray, 581.

Proceedings.  
R. S. 116, § 14.  
2 Cush. 346.  
4 Gray, 581.

Trial may be in  
court, &c.

Damages, how  
estimated.  
R. S. 116, § 15.  
2 Cush. 346.

Verdict for re-  
spondent;  
R. S. 116, § 16.  
10 Met. 89, 207.  
2 Allen, 436.  
for complain-  
ant.  
R. S. 116, § 17.  
4 Gray, 581.

Jury to fix  
height of dam,  
&c.;  
R. S. 116, § 18.  
12 Met. 142, 149.  
7 Gray, 296.  
12 Cush. 454.

to assess an-  
nual damages,  
and also a sum  
in gross.  
R. S. 116, § 19.  
17 Pick. 191.  
4 Met. 606.  
10 Met. 207.  
2 Gray, 407.  
7 Gray, 296.

Complainant  
may elect to  
take the sum  
in gross.  
R. S. 116, § 20.  
24 Pick. 296.  
2 Met. 607.

If not paid, re-  
spondent to  
have no benefit,  
until, &c.  
R. S. 116, § 21.  
12 Met. 149.  
4 Cush. 246.

Complainant  
may take annual  
damages, in-  
stead, &c.;  
R. S. 116, § 22.  
7 Gray, 296.

shall have lien  
therefor on mill,  
&c.  
R. S. 116, § 23.  
2 Gray, 407.

SECT. 14. All the proceedings for supplying a deficiency of jurors, and all other proceedings in the case, shall be substantially the same as are provided in said chapter forty-three.

SECT. 15. If the parties so agree by writing filed in the case, the trial may be in the court before a jury as in other civil actions, and in such case, if either party requires it, the jury shall view the premises alleged to be injured, subject to such regulations and terms as the court may prescribe.

SECT. 16. The jury, in estimating the damage to the land of the complainant, shall take into consideration any damage occasioned to his other land by the dam, as well as the damage occasioned to the land overflowed; and they shall also allow by way of set-off any benefit occasioned by such dam to the complainant, in relation to his lands.

SECT. 17. If the jury find by their verdict that the complainant is not entitled to recover any damages, and it is allowed and recorded, judgment shall be rendered for the respondent.

SECT. 18. If they find that the complainant is entitled to recover damages, they shall assess the amount of damages sustained within three years next preceding the institution of the complaint, and to the time of rendering the verdict; and if the verdict is allowed and recorded, the complainant shall have judgment and execution.

SECT. 19. If it is alleged in the complaint, that the dam is raised to an unreasonable height, or that it ought not to be kept up and closed during the whole year, the jury shall decide how much, if any, the dam shall be lowered, and also whether it shall be left open any part of the year, and if any, what part, and shall state such decision as a part of their verdict.

SECT. 20. They shall also ascertain and determine, by their verdict, what sum, if any, to be paid annually to the complainant, would be a just and reasonable compensation for the damages that may be thereafter occasioned by the dam, so long as it is used in conformity with the verdict; and also what sum in gross would be a just and reasonable compensation for all damages thereafter occasioned by such use of the dam, and for the right of maintaining and using the same forever in manner aforesaid.

SECT. 21. The complainant in such case, at any time within three months after the verdict is allowed and recorded, may elect to take the sum so awarded in gross for the right to maintain and use the dam forever, instead of receiving the annual compensation therefor; and if he makes such election, he shall within said three months cause the same to be entered on the record of the case in the clerk's office.

SECT. 22. The owner or occupant of the mill or dam shall, within three months after such election is thus entered, pay to the complainant, or secure to his satisfaction, said sum with interest from the time of the verdict. After the expiration of said three months, such owner or occupant shall lose all benefit of the provisions contained in this chapter, until payment of said damages and interest.

SECT. 23. If the complainant does not within said three months cause such entry of his election to be made on the record, he and all persons claiming under him shall be entitled to demand and receive from whoever shall be the owner or occupant of the mill, the annual compensation so established by the jury, so long as the dam is kept up and maintained; unless the sum is increased or diminished upon a new complaint as hereinafter provided.

SECT. 24. The person entitled to receive said annual compensation or gross damages shall have a lien therefor from the time of the institution of the original complaint, on the mill and mill-dam with their appurtenances, and the land under and adjoining the same and used therewith: *provided*, that such lien shall not extend to any sum

due more than three years before the commencement of an action therefor.

SECT. 25. Such person may maintain an action of contract therefor in the superior court, against the person who owns or occupies the mill when the action is brought; and shall therein recover the whole sum due and unpaid for the three years then last past, whoever has owned or occupied the mill during that time; and he shall be entitled to full costs, although the sum recovered does not amount to twenty dollars.

Action therefor,  
against whom to  
be brought.  
R. S. 116, § 24.  
2 Met. 506.  
4 Met. 428.  
10 Met. 359.  
13 Met. 172.  
4 Cush. 245.

6 Cush. 170, 308.

2 Gray, 407.

SECT. 26. The execution issued on such judgment may at any time within thirty days after judgment be levied on the premises so subject to the lien; and the officer may thereupon proceed to sell the same, or so much thereof as is necessary to satisfy the execution and all charges of levying it; and he shall proceed in making such sale in like manner in all respects as is provided with regard to the sale on execution of a right to redeem real estate mortgaged.

Premises may  
be sold on execution.  
R. S. 116, § 25.

SECT. 27. Such sale shall be valid and effectual against all persons claiming the premises by any title that has accrued within the time covered by the lien.

Sale, how far  
effectual.  
R. S. 116, § 26.

SECT. 28. Any person entitled to the premises so sold may redeem the same at any time within one year after the sale, upon paying to the purchaser or the person holding under him the sum paid therefor, with interest at the rate of twelve per cent. a year.

Right of redemption.  
R. S. 116, § 27.

SECT. 29. The provisions of this chapter shall not affect the right to keep up, maintain, and use, any water-mill and mill-dam, now lawfully existing, except as is herein expressly provided: but when the owner or occupant of a mill or dam makes any material change by raising the dam, or altering the machinery, or the manner of using the water, so as to cause additional damage to the land of another, it shall be considered as a new mill or dam, in respect to such additional damage, and the remedy and proceedings to recover compensation therefor shall be substantially such as are provided in this chapter respecting a new dam.

Existing mills  
and dams not  
affected except,  
&c.  
R. S. 116, § 28.  
17 Mass. 76.  
3 Met. 257.  
12 Met. 76.  
97 Mass. 402.

SECT. 30. The court to which a verdict is returned may set it aside for any sufficient cause, and grant a new trial to be had upon a new warrant or otherwise as the case may require.

New trial.  
R. S. 116, § 29.

SECT. 31. No action shall be sustained at common law for the recovery of damages for the erecting, maintaining, or using, any mill or mill-dam, except as is provided in this chapter.

Action at common law.  
R. S. 116, § 30.  
11 Mass. 369.  
12 Met. 147.

SECT. 32. The party prevailing in any suit under this chapter shall be entitled to his full costs, unless where it is otherwise expressly provided.

Costs.  
R. S. 116, § 31.  
2 Met. 508.

SECT. 33. The court shall award a reasonable compensation to the person who presides at the trial, and to the officer who executes the warrant; which with the pay of the jurors and other like charges shall be advanced by the complainant, and taxed and allowed in the bill of costs.

Compensation  
for services at  
trial, &c.  
R. S. 116, § 32.  
14 Gray, 112.

SECT. 34. When either party is dissatisfied with the annual compensation established by a jury, either under the provisions of this chapter or of the laws heretofore in force, a new complaint may be brought for the increase or diminution thereof, or for ascertaining the gross amount of the damages; and all the proceedings shall be conducted substantially in the manner before provided in the case of an original complaint: *provided*, that when a complainant has declined to accept gross damages awarded him, no jury shall again determine the amount of gross damages until the expiration of ten years thereafter.

New complaint  
by either party;  
but gross damages  
assessed  
only once in ten  
years.  
R. S. 116, § 33.  
9 Mass. 208.  
17 Mass. 79.  
2 Met. 508.  
12 Cush. 200.

SECT. 35. Such new complaint may be maintained by and against either of the parties to the original suit, or by and against any person lawfully holding under either of them.

who may  
maintain;  
R. S. 116, § 34.

SECT. 36. No such new complaint shall be brought until the expiration of one month after the payment of the then last year has fallen due;

when to be  
brought.

Tender.  
R. S. 116, § 35.  
2 Met. 508.

Mill owners  
may tender  
greater com-  
pensation, &c.  
R. S. 116, § 36.  
2 Met. 508.  
7 Gray, 297.

Land owner  
may offer to ac-  
cept less, &c.  
R. S. 116, § 37.  
2 Met. 508.  
7 Gray, 297.

Offer, by or to  
whom made, &c.  
R. S. 116, § 38.

Effect of agree-  
ment, if signed  
and recorded.  
R. S. 116, § 39.

Verdict not to  
bar new com-  
plaint, &c.  
R. S. 116, § 40.  
10 Mass. 72.

Respondent  
may make ten-  
der in court,  
&c. Costs.  
R. S. 116, § 41.  
7 Gray, 186, 297.

Judgment upon  
acceptance of  
tender. Ac-  
ceptance may  
be for past or  
future damages.  
R. S. 116, § 42.

Separate and  
joint owners of  
lands may join  
in complaint  
and have sepa-  
rate damages.  
1841, 88.

and either party may within the said month make an offer or tender to the other as hereinafter provided.

SECT. 37. The owner of the mill or dam may within said month offer in writing to the owner of the land any increase of said annual compensation; and if the owner of the land does not agree to accept the same, but brings a new complaint to obtain an increase thereof, he shall pay the costs, unless he obtains a verdict for a greater annual compensation than was so offered to him.

SECT. 38. The owner of the land may within said month offer in writing to the owner of the mill or dam, to accept any smaller sum than that established as said annual compensation; and if the owner of the mill or dam does not agree to pay such reduced compensation, but brings a new complaint to obtain a diminution thereof, he shall pay the costs, unless the annual compensation is reduced by the verdict to a sum less than that so offered to him.

SECT. 39. Such offer may be made by or to the respective tenants or occupants of the land, and of the mill or dam, in like manner and with like effect as if made by or to the respective owners; except that no agreement founded thereon shall bind said owners unless made with their consent.

SECT. 40. If the offer so made by either party is agreed to and accepted by the other, it shall establish the annual compensation to be thereafter paid, in like manner as if it had been established by a verdict and judgment upon a new complaint: *provided*, that a memorandum of such offer and acceptance, and of the agreement, is made and signed by the respective parties, or by persons duly authorized by them, and filed and recorded in the clerk's office of the court in which the former judgment was rendered, with a note of reference on the record of the former judgment to the book where the agreement is recorded.

SECT. 41. If upon a complaint by the owner of the land the jury decide that he is not entitled to any annual compensation, the judgment thereon shall be no bar to a new complaint for damages alleged to have arisen after the former verdict, and for compensation for damages thereafter sustained.

SECT. 42. In every original complaint brought by the owner of land alleged to be injured by a mill-dam, the respondent may bring into court and there tender any sum that he deems proper to be paid to the complainant for the damages incurred up to the time of such tender; and may also offer to pay any certain annual compensation for the damage that may be thereafter occasioned by the dam in question; and if the complainant does not accept the same with his costs up to that time, but proceeds in the suit, he shall, unless he recovers compensation than was so offered, pay the tender, and the respondent afterwards.

SECT. 43. If the complainant consents to accept the and future annual compensation and also for his costs up to the same effect as if it had been the complainant may accept either the offer for future annual compensation or the residue of the complaint under

SECT. 44. Two or more persons whether jointly or separately may in a complaint under this chapter before the same jury, which is the interest and title of the

ment and execution for costs and damages shall be had in conformity thereto.

SECT. 45. The provisions of chapter one hundred and twenty-nine, in respect to pleas in abatement, shall be applicable to complaints under this chapter; and when new defendants are summoned in pursuance of said provisions, the plaintiff may have a verdict against such of the defendants as he proves to be liable, although he fails as to the rest.

Pleas in abatement. New defendants. 1889, 181, § 5.

SECT. 46. No complaint for flowing shall be abated by reason of the death of any party, but the same may be prosecuted or defended by the surviving complainants or respondents, or the executors or administrators of the deceased; and if any such complaint is abated or otherwise defeated for any matter of form, or if after verdict for the complainant the judgment is reversed for error, upon a *certiorari* or otherwise, the complainant or any person claiming from, by, or under, him, may bring a new complaint for the same cause, at any time within one year after the abatement or other determination of the original complaint, or after the reversal of the judgment; and may upon the new complaint recover all damages sustained during the three years before the institution of the first complaint, or at any time afterwards.

Complaint not to abate by death of parties. Remedy for abatement or reversal of judgment. R. S. 118, § 48. 9 Gray, 178.

#### REGULATION OF DAMS.

SECT. 47. The county commissioners, on application made to them in writing by any persons owning mill or other property liable to destruction or damage by the breaking of a mill or reservoir dam, or on application of the mayor and aldermen or selectmen of any city or town on account of the liability of damage to any roads or bridges therein from the same cause, shall, after notice to the adverse party of the time and place, view and thoroughly examine such dam.

County commissioners to view, &c., on notice; 1864, 327, § 1.

1875, 178-§ 8

SECT. 48. If, in the judgment of the commissioners, the dam is not sufficiently strong and substantial to resist the action of the water under any circumstances which may reasonably be supposed to exist, they shall determine and direct what alterations or additions are required to make it permanent and secure; and shall give a written direction to the owner thereof to make such alterations or repairs within a reasonable time; and they shall record the result of such examination, which, if the owner of the dam had an opportunity to be heard before them, shall be admissible evidence in the trial of any issue involving his liability.

may direct alterations, &c. To record result of examination. Record to be evidence. 1864, 327, § 1.

SECT. 49. If the owner of a dam thus examined and adjudged to be unsafe, refuses or neglects to make such alterations, additions, or repairs, as the commissioners order, they shall, on being notified of such neglect or refusal by the party making application, cause such dam, or such parts thereof as they may deem necessary for the safety of property, roads, or bridges on the stream below, to be removed; and after such removal, no structure shall be erected except in compliance with the requirements of the commissioners.

Upon neglect of owner to repair, &c., commissioners to remove. Dam not to be rebuilt, except, &c. 1864, 327, § 2.

SECT. 50. If, when a dam is adjudged to be unsafe under the provisions of the three preceding sections, the pond caused by the dam is so filled with water that the dam cannot be removed without danger to mill and other property, and, upon notice, the owner neglects to raise or otherwise alter and make it safe, the commissioners shall cause it to be forthwith raised, or otherwise altered and made safe, at his expense.

If dam cannot be removed, commissioners to raise, &c. 1864, 327, § 3.

SECT. 51. If the commissioners order no alteration of or addition to a dam, the cost or expense of an examination under section forty-seven shall be paid by the party making the application; otherwise the expense shall be paid by the owner; but in all cases where the party making application is the owner of the dam, the expense shall be paid by him.

Costs, &c., by whom paid. 1864, 327, § 4.

Jurisdiction of  
S. J. C. to com-  
pel alterations,  
&c.

1867, 168.

*Repealed*  
1875-178-§ 8

SECT. 52. The supreme judicial court shall have jurisdiction in equity, and may compel the owner of any dam to make all alterations, additions, and repairs, ordered under the five preceding sections, and may make all judgments and decrees necessary to carry such orders into effect.

#### REPAIRING AND REBUILDING MILLS.

Repair of mills  
owned by sev-  
eral persons.  
R. S. 116, § 44.  
4 Mass. 569.  
11 Mass. 325.

SECT. 53. When a mill owned by several persons as joint tenants or tenants in common, or the dam or appurtenances of such mill, need to be repaired or rebuilt in whole or in part, and the proprietors do not all agree to join in repairing or rebuilding the same, the greater part in interest of the proprietors may cause the work to be done at the expense of the whole, in proportion to their respective interests.

Meeting of pro-  
prietors, how  
called.  
R. S. 116, § 45.

SECT. 54. One or more of the proprietors may call a meeting of the whole of them, to be held at the mill, to consult and agree upon the measures to be taken for repairing or rebuilding the same, by a written notice signed by the persons who call it and addressed to each of the other proprietors, setting forth that the mill in question needs to be repaired or rebuilt, and that a meeting of the proprietors thereof will be held at the mill on a certain day and hour mentioned in the notice, to consult and agree upon the measures to be taken for that purpose, and requesting the attendance of the proprietor at such meeting.

Notice thereof,  
how served and  
returned.  
R. S. 116, §§ 46,  
47.

SECT. 55. The notice shall be served by any officer authorized to serve civil process between the same parties, by delivering an attested copy thereof to the person to whom it is addressed, or by leaving such copy at his dwelling-house or last and usual place of abode, not more than thirty nor less than seven days before the day appointed for the meeting, and his return, specifying the persons on whom he served it and the time and manner of the service on each, shall be deemed sufficient evidence thereof.

Majority in in-  
terest may de-  
cide.  
R. S. 116, § 48.

SECT. 56. At the meeting so called, or any adjournment thereof, the greater part in interest of all the proprietors of the mill may take measures to cause the mill, or the dam or appurtenances thereof, to be repaired or rebuilt, as they shall judge most for the interest of all concerned therein.

Each proprietor  
liable.  
R. S. 116, § 49.

SECT. 57. Each proprietor shall, upon demand after the work is completed, pay to the proprietors by whom it has been advanced, with interest from the time of the advance, his just and equal part of the charge and expense of such repair or rebuilding, in proportion to his share or interest in the mill.

Remedy by lien  
on rents, or ac-  
tion.  
R. S. 116, § 50.

SECT. 58. The proprietors who advance the money so expended shall have a lien therefor on the rents and profits of the mill, and may retain so much thereof as belongs to any proprietor indebted to them for such advance, to be applied to the payment of his debt; or they may maintain a suit for the debt, or for as much of it as shall not be paid out of the rents and profits.

Guardian of  
proprietor may  
act for him.  
R. S. 116, § 51.

SECT. 59. When a proprietor is under guardianship, as a minor or otherwise, his guardian may act for him in calling and attending a meeting of the proprietors, and may there vote and do all such other acts in the premises as the ward could do if competent to act for himself; all which shall be binding on the ward and his estate.

Apportionment  
between tenant  
and reversioner.  
R. S. 116, § 53.

SECT. 60. When part of the mill is held by one person as tenant for life or years, with remainder or reversion to another, the sum due for the repairs and other expenses on that part of the mill shall be apportioned on the tenant for life or years and the remainder-man or reversioner, in proportion to the value of their respective interests in the premises; and the party to whom the money is due from such remainder-man or reversioner, shall have a lien on the rents and profits belong-

ing to him after his estate comes into possession, if not sooner paid, notwithstanding any limitation by lapse of time.

SECT. 61. Every mortgagee in possession shall be considered as a proprietor for all the purposes of this chapter; but the mortgagor, if the action is brought against him before his right of redemption is foreclosed, shall also be liable for all sums so due on account of his share of the mill, so far as the same are not recovered from the mortgagee. All sums paid on this account by the mortgagee shall be considered and allowed, between him and the mortgagor, as so much paid for repairs or improvements of the mortgaged premises.

Case of a mortgagee in possession;  
R. S. 116, § 64.

SECT. 62. Every tenant in tail of any part of a mill shall for all the purposes of this chapter be considered as the proprietor thereof in fee simple.

tenant in tail.  
R. S. 116, § 66.

SECT. 63. All sums due from one proprietor to another for moneys advanced by force of this chapter, may be recovered in an action of contract; and when two or more proprietors are so indebted, the creditor or creditors may maintain a suit in equity in the supreme judicial court against any two or more of them, in which suit the court shall determine what amount is due from each of the debtors severally, and shall award judgment and execution against each of them accordingly; and may make all such orders, decrees, and judgments, and issue such process as may be necessary and proper to carry into effect the provisions of this chapter. The court shall apportion the amount so recovered among the plaintiffs in the suit, if more than one, according to their respective rights.

How suits between proprietors brought.  
R. S. 116, § 63.  
1862, 312.

SECT. 64. Nothing contained in this chapter shall in any way affect any contract or agreement by or between the proprietors of any mill as to the repair or rebuilding thereof.

Chapter not to affect agreements, &c.  
R. S. 116, § 68.

#### DUTIES AND COMPENSATION OF MILLERS.

SECT. 65. Every miller occupying and using a grist mill shall be provided with scales and weights, or a vibrating steelyard, to weigh corn, grain, and meal, to and from the mill, if required; and if he neglects to keep himself so provided, or refuses so to weigh corn, grain, or meal, when required, he shall for every such neglect or refusal forfeit and pay to any person who sues therefor a sum not exceeding five dollars, to be recovered in an action of tort.

Millers to keep scales, &c., and weigh grain, if required, under penalty.  
R. S. 116, § 69.  
1862, 312.

SECT. 66. The toll for grinding any sort of grain shall not exceed one-sixteenth part thereof.

What toll allowed.  
R. S. 116, § 60.

## CHAPTER 150.

### OF LIENS ON BUILDINGS AND LAND.

112 m. 18, 309  
116 m. 374  
117 m. 167, 176

#### SECTION

1. Party furnishing labor and materials to have lien on building, &c., except, &c.
2. Lien for material not to attach without notice to owner of land if, &c.;
3. not of force against existing mortgage;
4. not to attach if owner of building, &c., gives notice;
5. dissolved unless party file statement of account, &c., with city or town clerk in thirty days. Record.
6. Inaccuracy in statement not to invalidate, unless, &c.

#### SECTION

7. Lien dissolved unless suit commenced in ninety days;
8. may be enforced by petition to superior court;
9. before police court and justices, &c., if claim does not exceed \$100.
10. Petition may be inserted in writ;
11. to contain brief statement of contract, &c.
12. Parties may amend.
13. Any number who have labored on same building may join in petition.
14. Notice to owner, and to other creditors;

*Lien of cotenants  
for taxes paid.*  
1875. 236.

*Bond to release*

1874, 321

*Railroads*

1873 & 353

## SECTION

15. to absent parties, &c.
16. Further notice.
17. Claims may be proved and contested.
18. Facts may be tried by jury.
19. Claims not payable may be allowed;
20. for part performance of contract.
21. Sale of premises, when ordered.
22. Part may be sold, if sufficient.
23. Notice of sale.
24. Right of redemption.
25. Proceeds of sale, how distributed;
26. may be brought into court, &c.;
27. surplus, how disposed of. Successive orders of distribution.
28. Prior attaching creditor preferred. Proportion of proceeds held, &c.
29. Such proportion to be applied on execution.

## SECTION

30. Subsequent attachment.
31. Attachment intervening between two liens.
32. Rights of attaching creditors and of persons having liens, as between themselves.
33. Debtor having an estate less than his simple, &c., lien to bind his interest.
34. Lien may be enforced against heirs, &c.;
35. by executors or administrators.
36. Appeal allowed to S. J. C.
37. Suits commenced by one creditor may be prosecuted by another when, &c.;
38. commenced prematurely, may be prosecuted, &c. Costs.
39. Costs in other cases.
40. Action at law not barred.
41. Discharge of lien, how executed.
42. Petition to be indorsed.

## Party furnishing

labor, &c., to have lien.

1852, 307, § 1.

1855, 431, § 1.

20 Pick. 542.

13 Met. 153.

4 Cush. 536.

5 Cush. 119, 122.

11 Cush. 238, 308.

1 Gray, 576.

3 Gray, 228.

4 Gray, 289.

6 Gray, 538.

7 Gray, 429.

12 Cush. 389.

9 Gray, 393.

18 Gray, 312, 414.

2 Allen, 424.

Lien for material

not to attach

without notice;

1855, 431, § 1.

See 1872, 318, § 3.

not of force

against existing

mortgage;

1852, 307, § 1.

5 Cush. 124.

not to attach if

owner of build-

ing, &c., gives

notice;

1855, 431, § 4.

106 Mass. 350.

dissolved un-

less party file

statement of ac-

count, &c., with

city or town clerk

in thirty days.

Record.

1855, 431, § 2.

6 Gray, 531.

13 Gray, 100.

3 Allen, 464.

7 Allen, 85.

8 Allen, 590.

11 Allen, 154.

See 1872, 318, § 2.

inaccuracy in

statement not to

invalidate, un-

less, &c.

1855, 431, § 3.

8 Allen, 538.

103 Mass. 233.

Lien dissolved

SECTION 1. Any person to whom a debt is due for labor performed or furnished, or for materials furnished and actually used, in the erection, alteration, or repair, of any building or structure upon real estate, by virtue of an agreement with, or by consent of, the owner of such building or structure, or any person having authority from, or rightfully acting for, such owner in procuring or furnishing such labor or materials, shall have a lien upon such building or structure, and upon the interest of the owner thereof in the lot of land upon which the same is situated, to secure the payment of the debt so due to him, and the costs which may arise in enforcing such lien under this chapter; except as is provided in the following sections.

SECTION 2. Such lien for materials furnished shall not attach unless the person furnishing the same before so doing gives notice to the owner of the property to be affected by the lien, if such owner is not the purchaser, that he intends to claim such lien.

SECTION 3. Such lien shall not avail or be of force against any mortgage actually existing and duly recorded prior to the date of the contract under which the lien is claimed.

SECTION 4. The owner of any such building or structure in process of erection or being altered or repaired, other than the party by whom or in whose behalf a contract for labor and materials has been made, may prevent the attaching of any lien for labor thereon not at the time performed, or materials not then furnished, by giving notice in writing to the person performing or furnishing such labor, or furnishing such materials, that he will not be responsible therefor.

SECTION 5. Such lien shall be dissolved unless the person desiring to avail himself thereof, within thirty days after he ceases to labor on, or furnish labor or materials for, such building or structure, files in the office of the clerk of the city or town in which the same is situated, a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien, sufficiently accurate for identification, with the name of the owner or owners of the property, if known; which certificate shall be subscribed and sworn to by the person claiming the lien, or by some one in his behalf, and shall be recorded in a book kept for the purpose by the clerk of such city or town, who shall be entitled to the same fees therefor as for recording mortgages of equal length.

SECTION 6. No inaccuracy in such statement relating to the property to be covered by the lien, if the property can be reasonably recognized, or in stating the amount due for labor or materials, shall invalidate the proceedings, unless it appears that the person filing the certificate has wilfully and knowingly claimed more than his due.

SECTION 7. Unless a suit for enforcing the lien is commenced within

108 m. 103

104 m. 219

108 m. 103

109 m. 395

110 m. 116

116 m. 375

1875, 20

1875, 20



ninety days after the person desiring to avail himself thereof ceases to labor on, or furnish labor or materials for, such building or structure, the lien shall be dissolved.

5 Allen, 406.

7 Allen, 85.

9 Allen, 575.

unless suit commenced in ninety days.  
1858, 56, § 1.

SECT. 8. The lien may be enforced by petition to the superior court in the county where the building or structure is situated. The petition may be filed in term, or in the clerk's office in vacation, and the date of the filing shall be deemed the commencement of the suit.

Lien, how enforced.  
R. S. 117, § 5.  
1851, 343, § 4.  
1856, 431, § 5.  
2 Allen, 609.

SECT. 9. When the amount of the claim does not exceed one hundred dollars, the lien may be enforced by petition to a justice of the peace, or police court; and such justices and courts shall have like power and authority within their jurisdiction as are herein conferred upon the superior court, with like rights of appeal to the parties as exist in other civil cases.

before police courts, &c., if claim does not exceed \$100.  
1856, 431, § 5.

SECT. 10. The petition may be inserted in a writ of original summons, and be served, returned, and entered, as other civil cases.

Petition may be inserted in writ;  
1856, 431, § 5.

SECT. 11. Whether filed as a petition, or inserted in such summons, the petition shall contain a brief statement of the contract on which it is founded, and of the amount due thereon, with a description of the premises subject to the lien, and all other material facts and circumstances; and shall pray that the premises may be sold, and the proceeds of the sale be applied to the discharge of the demand.

to contain brief statement of contract, &c.  
R. S. 117, § 6.  
11 Cush. 308.

SECT. 12. The court may at any time allow either party to amend his pleadings as in actions at common law.

Parties may amend.  
1856, 431, § 6.  
Any number who have labored on same building may join in petition.  
1852, 307, § 2.  
1856, 431.  
8 Allen, 458.

SECT. 13. Any number of persons who have actually performed labor or furnished labor or materials on one or more buildings or structures upon different lots of land, where the labor was performed for the same owner, contractor, or other person, may join in the same petition for their respective liens; and the same proceedings shall be had in regard to the rights of each petitioner, and the respondent may defend as to each petitioner in the same manner as if he had severally petitioned for his individual lien.

SECT. 14. (R.) [The court in which the petition is entered shall order notice to be given to the owner of the building or structure, that he may appear and answer thereto at a certain day in the same term, or at the next term, by serving him with an attested copy of the petition, with the order of the court thereon, fourteen days at least before the time assigned for the hearing; and the court shall also order notice of the filing of the petition to be given to all other creditors who have a lien of the same kind upon the same estate, by serving them with a copy of the last-mentioned order in like manner.]

Notice to owner, and to other creditors.  
R. S. 117, § 7.  
1856, 431, § 1.  
5 Cush. 122, 123.  
8 Allen, 458.  
11 Allen, 157.  
103 Mass. 231.  
(R.) Repeat and substitute.  
1871, 78.

SECT. 15. If it appears to the court that any of the parties entitled to notice are absent or that they cannot probably be found to be served with the notice, the court may, instead of the personal notice before mentioned, or in addition thereto, order notice to all persons interested, by publishing in some newspaper the substance of the petition, with the order of the court thereon, assigning the time and place for a hearing, or may order such other notice to be given, as may under the circumstances of the case be considered most proper and effectual.

to absent parties, &c.  
R. S. 117, § 8.  
5 Cush. 124.  
103 Mass. 232.

SECT. 16. If at the time assigned for the hearing it appears to the court that any of the persons interested have not had sufficient notice of the suit, the court may order further notice to them, in such manner as may be considered most proper and effectual.

Further notice.  
R. S. 117, § 9.  
5 Cush. 124.

SECT. 17. At the time assigned for the hearing, or within such further time as the court allows for that purpose, every creditor having a lien of the kind before mentioned upon the same property, may appear and prove his claim, and the owner and each of the creditors may contest the several claims of every other creditor, and the court shall hear and determine them in a summary manner, either with or without a jury, as the case may require.

Claims may be proved and contested.  
R. S. 117, § 10.  
5 Cush. 124.

Facts may be  
tried by jury.  
R. S. 117, § 11.  
1852, 214, § 2.

Claims not pay-  
able may be al-  
lowed.  
R. S. 117, § 12.

for part per-  
formance of con-  
tract  
R. S. 117, § 13.  
6 Cush. 122.  
11 Cush. 240.

Sale of premises,  
when ordered.  
R. S. 117, § 14.  
106 Mass. 231.

116 M. 196

Part may be sold  
if sufficient.  
R. S. 117, § 15.

Notice of sale.  
R. S. 117, § 16.  
See Ch. 108, § 41.

Right of redemp-  
tion.  
R. S. 117, § 17.  
See Ch. 108.  
106 Mass. 231.  
Proceeds of sale,  
how distributed;  
R. S. 117, § 18.

116 M. 196

May be  
brought into  
court, &c.  
Successive orders  
of distribution.  
R. S. 117, § 19.

surplus, how  
disposed of.  
R. S. 117, § 20.  
1855, 481, § 1.  
13 Met. 168.  
5 Cush. 123.

Prior attaching  
creditor pro-  
ferred. Proportion  
of proceeds  
held, &c.  
R. S. 117, § 21.  
1855, 431, § 1.  
See 1861, 181.

SECT. 18. Every material question be submitted to a jury, if required by the court; and the trial shall be by issue framed, or otherwise, as the court before a justice of the peace, or pol

SECT. 19. The court shall ascertain to each creditor who has a lien of the property in question; and every such condition, although not then payable of interest to the time when it would

SECT. 20. When the owner fails to and by reason thereof the other party vented from completely performing his reasonable compensation for as much labor to the price stipulated for the whole claim accordingly.

SECT. 21. If the lien is established whose claims are presented, the court to be made by any officer authorized to same parties.

SECT. 22. If part of the property is sold and sold without damage to the whole sufficient to satisfy all debts proved in the of that part, if it appears to be most concerned.

SECT. 23. The officer who makes the time and place in the manner prescribed execution of a right of redeeming mortgaged orders a different notice to be given.

SECT. 24. Any interest in real estate the manner provided in the case of a redeeming mortgaged lands.

SECT. 25. If all the claims against are ascertained at the time of ordering officer to pay over and distribute the proceeds, including all lawful charges and expenses, to the amount of their respective debts; and if there is not sufficient, then to be distributed among the creditors in proportion to their debts.

SECT. 26. If all the claims are not ordered, or if for any other reason the order is postponed, the officer may postpone the order of distribution, in the proceeds of the sale into court, the decree of the court; and if by request of the creditors, or for any other cause, the whole may be distributed at once, the court may make such distribution, as the circumstances may require.

SECT. 27. If there is any surplus remaining after making all the payments before mentioned over to the owner of the property; but the owner shall be liable to be attached or to have a writ of execution against him, as if it proceeded from a sale made by the court.

SECT. 28. If the interest of the owner in the land, is under attachment at the time of the account, the attaching creditor may, to the extent of the value of the buildings and land, as stated in the statement was recorded; and the court may, in any other case, as the case may require, wh

the sale shall be held subject to the attachment, as derived from the value of the property when the statement was recorded.

SECT. 29. If the attaching creditor recovers judgment he shall be entitled to receive on his execution the proportion of the proceeds held subject to his attachment, or as much thereof as may be necessary to satisfy his execution, and the residue of the proceeds shall be applied in the same manner as if there had been no such attachment.

Such proportion to be applied on execution.  
R. S. 117, § 22.

SECT. 30. If the interest of the owner of the property is attached after the recording of the statement, the proceeds, after discharging all prior liens and claims, shall be applied to satisfy the execution of such attaching creditor, in like manner as is provided in chapter one hundred and thirty-three, in the case of two or more successive attachments or seizures in execution of a right of redemption.

Subsequent attachment to be satisfied after lien.  
R. S. 117, § 23.

SECT. 31. If an attachment is made after the recording of such statement, and if after the attachment another like statement is recorded, the creditor in the latter statement shall be entitled to be paid only out of the residue of the proceeds remaining after paying all that is due on the demands, a statement of which is recorded before the attachment, and satisfying the attaching creditor.

Attachment intervening between two liens.  
R. S. 117, § 24.

SECT. 32. When there are several attaching creditors, they shall as between themselves be entitled to be paid according to the order of their attachments; but when several creditors who are entitled to the lien provided for in this chapter have equal rights as between themselves, and the fund is insufficient to pay the whole, they shall share it equally in proportion to their respective debts.

Rights of attaching creditors and of persons having liens, as between themselves.  
R. S. 117, § 25.

SECT. 33. If the person for whom the work is done, or materials are furnished, has an estate for life, or any other estate less than a fee simple, in the land, or if the property at the time of recording the statement is mortgaged, or under any other incumbrance, the lien before provided for shall bind his whole estate and interest therein, in like manner as a mortgage would have done; and the creditor may cause the right of redemption, or whatever other right or estate the owner had in the property, to be sold and applied to the discharge of his debt according to the provisions of this chapter.

Debtor having an estate less than fee simple, &c., lien to bind his interest.  
R. S. 117, § 26.  
1855, 481.  
13 Met. 155.  
5 Cush. 122.  
3 Gray, 285.  
11 Allen, 154.  
101 Mass. 437.  
108 Mass. 471.  
106 Mass. 281.

SECT. 34. If the person indebted dies or conveys away his estate or interest before the commencement of a suit on the contract, the suit may be commenced and prosecuted against his heirs, or whoever holds the estate or interest which he had in the premises at the time the labor or materials were performed or furnished; or if a suit is commenced in his lifetime, it may be prosecuted against his executors, administrators, heirs, or assigns, in like manner as if the estate or interest had been mortgaged to secure the debt.

Lien may be enforced against heirs or assigns;  
R. S. 117, § 27.  
1855, 481.  
5 Cush. 123.

SECT. 35. If the creditor dies before the commencement of a suit, the suit may be commenced and prosecuted by his executors or administrators; or if commenced in his lifetime, it may be prosecuted by them as it might have been by the deceased if living.

by executors or administrators.  
R. S. 117, § 28.

SECT. 36. Any party interested in a suit brought under this chapter may appeal to the supreme judicial court, from the final decree or judgment of the superior court, as is prescribed in relation to other civil cases, and the cause shall be thereupon heard and determined in the supreme judicial court, according to the provisions of this chapter.

Appeal allowed to S. J. C.  
R. S. 117, § 29.  
1840, 87.

SECT. 37. If it appears in any stage of the proceedings that the suit was commenced by the petitioning creditor before his right of action accrued or after it was barred, or if he becomes nonsuit, or fails to establish his claim, the suit may be prosecuted by any other creditor having such lien, in the same manner as if it had been originally commenced by him, if the circumstances of the case are such that he might then, or at any time after the commencement of the original suit, have commenced a like suit on his own claim.

Suits commenced by one creditor may be prosecuted by another when, &c.  
R. S. 117, § 30.



retained by the mortgagee, it shall not be valid against any person other than the parties thereto, except as is provided in the following section.

97 Mass. 453. 99 Mass. 400. 108 Mass. 227. 104 Mass. 262. 105 Mass. 61.

SECT. 2. Such record shall not be necessary to the validity of a mortgage, contract of bottomry, or respondentia, or any transfer, assignment, or hypothecation, of a ship or vessel. Nor shall a record be necessary to the validity of any transfer in mortgage of goods at sea or abroad, if the mortgagee takes possession of such goods as soon as may be after their arrival in this state.

97 Mass. 489. See U. S. Stat. 1850, 27.

SECT. 3. City and town clerks, upon payment of their fees, shall record all mortgages of personal property delivered to them, in books kept for the purpose, noting therein, and on each mortgage, the time it is received; and such mortgages shall be considered as recorded at the time when left for the purpose in the clerk's office. The fees for recording, and all other services relating thereto, shall be the same as are allowed to registers of deeds for like services.

SECT. 4. When the condition of a mortgage of personal property is broken, the mortgagor, or any person lawfully claiming or holding under him, may redeem the same at any time before the property is sold in pursuance of the contract between the parties, or the right of redemption is foreclosed as hereinafter provided.

SECT. 5. The person entitled to redeem shall pay or tender to the mortgagee or person holding under him the sum due on the mortgage, or perform or offer performance of the thing to be done, and shall pay all reasonable and lawful charges and expenses incurred in the care and custody of the property, or otherwise arising from the mortgage; and if upon such payment or performance or tender thereof the property is not forthwith restored, the person entitled to redeem may recover it in an action of replevin, or may recover such damages as he may have sustained by the withholding thereof, in any action adapted to the circumstances of the case.

SECT. 6. The mortgagee or his assigns, after condition broken, may give to the mortgagor, or the person in possession of the property, claiming the same, written notice of his intention to foreclose the mortgage for breach of the condition thereof, which notice shall be served by leaving a copy with the mortgagor, or person in possession of the property, claiming the same, or by publishing it at least once a week for three successive weeks in one of the principal newspapers published in the town or city where the mortgage is properly recorded, or where the property is situated, or if there is no such paper, in one of the principal newspapers published in such county.

SECT. 7. The notice with an affidavit of service shall be recorded wherever the mortgage is recorded, and, when so recorded, the same, or a copy of the record, shall be admitted as evidence of the giving of such notice.

SECT. 8. If the money to be paid, or other thing to be done, is not paid or performed, or tender thereof made, within sixty days after such notice is so recorded, the right to redeem shall be foreclosed.

PLEDGES.

SECT. 9. The holder of personal property in pledge for the payment of money or the performance of any other thing, may, after failure to pay or perform, give written notice to the pledger that he intends to enforce payment or performance by a sale of the pledge, and such notice shall be served, and together with an affidavit of service be recorded in the clerk's office of the city or town where the pledgee resides, in the manner and with like effect as provided in sections six and seven for notices of foreclosure.

SECT. 10. If the money to be paid or other thing to be done is not

14 Gray, 128, 481.  
1 Allen, 378.  
5 Allen, 281.

Transfers, &c., of vessels, and of goods at sea, &c., need not be recorded.  
R. S. 74, § 6.  
1851, 57.  
10 Gray, 418.  
5 Allen, 281.

Town clerk to record mortgages.  
R. S. 74, § 7.  
105 Mass. 51, 448.  
See 1865, 43, § 2.

When mortgaged property redeemable.  
R. S. 104, § 40.

Proceedings for its redemption and recovery.  
R. S. 107, § 41.  
4 Gray, 330.  
97 Mass. 37, 489.

111m. 22

Notice of foreclosure, how to be given;  
1848, 72, § 1.  
1856, 174.  
12 Met. 308.  
10 Cush. 119.  
2 Gray, 203.  
102 Mass. 230.

to be recorded with mortgage.  
1868, 8.  
97 Mass. 489.

Right to redeem for sixty days after notice.  
1848, 72, § 1.  
See 1863, 179, § 7.

Holder of pledge may give notice, &c., to be served and recorded.  
7 Allen, 23.  
10 Allen, 505.  
See 1863, 174.

If debt not paid

in sixty days,  
pledge may be  
sold, &c.

Contracts not af-  
fected nor rights  
of pledgees  
limited.  
See Ch. 161, §§ 63,  
64.

paid or performed, or tender thereof made, within sixty days after such notice is so recorded, the pledgee may sell the pledge at public auction and apply the proceeds to the satisfaction of the debt or demand, and the expenses of the notice and sale, and any surplus shall be paid to the party entitled thereto, on demand.

SECT. 11. The preceding sections shall not authorize the pledgee to dispose of the pledge contrary to the terms of the contract under which it is held, nor limit his right to dispose of it in any other manner allowed by the contract or the rules of law.

#### LIENS ON SHIPS AND VESSELS.

Lien on ships and  
vessels for labor  
performed and  
materials fur-  
nished.  
1866, 231, § 1.  
18 Gray, 129, 134.  
3 Allen, 605.  
7 Allen, 287.  
11 Allen, 157.  
100 Mass. 409.  
108 Mass. 227.  
See 1862, 186.

SECT. 12. When, by virtue of a contract, expressed or implied, with the owners of a ship or vessel, or with the agents, contractors, or subcontractors, of such owners, or any of them, or with any person having been employed to construct, repair, or launch, such ship or vessel, or to assist them, money is due to any person for labor performed, materials used, or labor and materials furnished, in the construction, launching, or repairs of, or for constructing the launching ways for, or for provisions, stores, or other articles, furnished for or on account of, such ship or vessel, in this state, such person shall have a lien upon the ship or vessel, her tackle, apparel, and furniture, to secure the payment of such debt; which lien shall be preferred to all others thereon except mariners' wages, and shall continue until the debt is satisfied.

to be dissolved  
unless sworn  
statement of de-  
mand, &c., is  
filed for record,  
&c.  
1866, 231, § 2.  
3 Allen, 37.  
98 Mass. 320.

SECT. 13. Such lien shall be dissolved unless the person claiming the same files, within four days from the time the ship or vessel departs from the port at which she was when the debt was contracted, in the office of the clerk of the city or town within which the ship or vessel was at the time the debt was contracted, a statement, subscribed and sworn to by himself or some person in his behalf, giving a just and true account of the demand claimed to be due to him, with all just credits, and also the name of the person with whom the contract was made, the name of the owner of the ship or vessel, if known, and the name of the ship or vessel, or a description thereof sufficient for identification; which statement shall be recorded by the clerk of such city or town in a book kept by him for that purpose, for which he shall receive the same fees as for recording mortgages of equal length.

When ship is  
built in two  
places, &c.  
Inaccuracy in de-  
scription, &c.  
not to affect, &c.

SECT. 14. If the ship or vessel is partly constructed in one place and partly in another, either place shall be deemed the port at which she was when the debt was contracted within the meaning of this chapter; and no inaccuracy in the description of the ship or vessel, if she can be recognized thereby, or in stating the amount due for labor or materials, shall invalidate the proceedings, the certificate has wilfully and k

Lien, how en-  
forced.  
1866, 231, § 3.  
1869, 196.  
20 How U. S. R.  
303.  
10 Gray, 64.  
3 Allen, 207, 211.  
108 Mass. 231.

SECT. 15. Such lien may be enforced for the county where the vessel was or in which she is at the time of may be entered in court or filed be inserted in a writ of original and served, returned, and entered in subsequent proceedings for enforcing provided, be as prescribed in chapter liens on buildings and land, so far as time of entering or filing the petition for such ship or vessel, her tackle, and furniture, shall continue in force, or may be dissolved, but such dissolution shall not discharge the materials, or work done or furni

Petition, what to  
contain.

SECT. 16. The petition shall contain a statement of the materials, or work done or furni

158.234  
98m.320  
115m.170

15 Gray 234

109 m. 576

articles furnished, and the amount due therefor, with a description of the ship or vessel subject to the lien, and all other material facts and circumstances, and shall pray that the ship or vessel may be sold and the proceeds of the sale applied to the discharge of the demand.

SECT. 17. The court may at any time allow either party to amend his pleadings as in actions at common law.

Amendments.  
98 Mass. 820.

SECT. 18. Any number of persons having such liens upon the same ship or vessel may join in the same petition to enforce the same; and the same proceedings shall be had in regard to the respective rights of each petitioner, and the respondent may defend as to each petitioner, in the same manner as if they had severally petitioned for their individual liens.

Several claimants  
may join in the  
same petition.  
1855, 231, § 4.

SECT. 19. When there is money due to more than one person holding a lien upon a ship or vessel under the provisions of this chapter, all parties interested having been cited to appear and answer, the claims of all shall be marshalled, and the court shall make such order or decree as may be necessary to prevent the enforcement of a double lien for the same labor, materials, stores, provisions, or other articles, and to secure the just rights of all. And the proceeds arising from the sale of such ship or vessel, after deducting all proper costs and expenses, shall be distributed among the several claimants to the amount of their respective debts: *provided*, that when such proceeds are insufficient to satisfy the liens of all, those having liens for labor shall receive a percentage on their respective claims one-third greater, as near as may be, than those having liens for materials, stores, or other articles.

Claims in such  
case to be mar-  
shalled and pro-  
ceeds distributed.  
Proviso.  
1855, 231, § 5.

SECT. 20. The eight preceding sections shall not affect the lien as now existing on foreign ships and vessels.

Liens on foreign  
vessels not affect-  
ed.  
1855, 231, § 6.

#### OTHER LIENS.

SECT. 21. Whoever has a lien, other than those described in chapter one hundred and fifty and in the nine preceding sections, for money due to him on account of work and labor, care and diligence, or for money expended, on or about personal property, by reason of any contract express or implied, if the money is not paid within sixty days after a demand in writing delivered to the debtor or left at his usual place of abode if within this state, or made by letter addressed to him at his usual place of abode without the state and deposited in the post office to be sent to him, may apply by petition to a justice of the peace or police court in the county where the petitioner resides, for an order for the sale of the property in satisfaction of the debt.

Party having lien  
may after demand  
petition a justice  
of the peace, &c.,  
for sale, &c.  
6 Allen, 246.  
7 Allen, 412.  
14 Allen 139.

SECT. 22. The justice or court shall thereupon issue a notice to the owner of the property to appear at a time and place designated, to show cause why the prayer of the petition should not be granted; which notice shall be served by delivering to the owner, or leaving at his usual place of abode if within the state, a copy thereof, fourteen days before the day of hearing, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person with an affidavit to the truth of the return.

Justice, &c.,  
shall issue notice  
to show cause.  
Service.  
Return.

SECT. 23. If the owner is unknown, the application may be made sixty days after the money becomes due, and a notice may issue "to the unknown owner," describing the property.

Petition if owner  
unknown.

SECT. 24. If the owner resides out of the state, or is unknown, notice may be given by a publication of the order in the manner prescribed for the publication of notices in section six.

Publication of  
notice, &c.

SECT. 25. If the owner makes default at the time appointed, or if upon a hearing of the parties it appears that a lien exists upon the property, and that the same ought to be sold for the satisfaction of the debt, the justice or court may make an order for that purpose, and if no

Order of sale.  
Disposition of  
proceeds.

appeal is taken, the property may be sold in conformity therewith. Any surplus of the proceeds of sale, after satisfying the debt and all costs and charges, shall be paid to the owner upon demand.

Amount due, &c.

SECT. 26. The justice or court may ascertain the amount due up to the time of the entering of the order, and make a record thereof.

Appeal.  
Recognizance.

SECT. 27. Either party may appeal from the final order of the justice or court in the same manner as in other civil cases, and the case shall be heard and determined in the court above, and such order made as justice shall require. If the respondent appeals, he shall recognize for the prosecution of his appeal and the payment of any balance of the debt with costs which may remain unsatisfied after a sale of the property, if judgment is rendered against him.

Costs.

SECT. 28. The prevailing party shall recover his costs, and the justice or court may issue execution therefor.

SECT. 29. Boarding-house keepers shall have a lien on the baggage and effects brought to their houses belonging to their guests or boarders, except mariners, for all proper charges due for fare and board, and the lien may be enforced as provided in the eight preceding sections.

SECT. 30. The preceding sections shall not limit or restrict the right of any party having a lien upon property to hold and dispose of the same in any other manner authorized by law.

Boarding-house  
keepers to have  
lien on baggage.  
1859, 229.  
See Ch. 52, § 28.  
10 Allen, 360.  
Rights of persons  
having lien not  
restricted.

110 Am. 158  
115 Am. 70

## CHAPTER 152.

### OF RECOGNIZANCES FOR DEBTS.

#### SECTION

1. Recognizance, debtor may bind himself by;
2. to be taken before superior court, &c., or clerk. Form of;
3. interest upon;
4. to be recorded. Consusor must be known.
5. Execution may be issued;
6. proceedings for obtaining. Form, &c.
7. Recognizance may be taken before a justice of the peace, &c. Execution.
8. Executions, where to run.

#### SECTION

9. Executions, how taken out by an executor or administrator.
10. Proceedings in case of death of consusor.
11. Limitation as to issuing of execution.
12. Alias, &c., executions may issue.
13. Death of one of several consusors or consusees.
14. *Audita querela*, &c., as in case of a judgment.
15. Fees.

Recognizance,  
debtor may bind  
himself by;  
R. S. 118, § 1.

to be taken be-  
fore superior  
court, or clerk;  
R. S. 118, § 2.  
1859, 196.

form of;

SECTION 1. Any person by law capable of binding himself by a common bond, may enter into a recognizance in the manner hereinafter mentioned, for the payment of a debt; and may thereby subject his person, goods, and estate, to be taken on execution.

SECT. 2. The recognizance may be taken before the superior court in any county in term time, or before the clerk of the court in vacation, and shall be substantially as follows:—

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ personally appeared before the superior court \_\_\_\_\_, now held at \_\_\_\_\_ within and for the county of \_\_\_\_\_ (or, before \_\_\_\_\_ the clerk of the superior court \_\_\_\_\_ for the county of \_\_\_\_\_) and acknowledged himself to be indebted to \_\_\_\_\_ of \_\_\_\_\_ in the sum of \_\_\_\_\_ to be paid to said \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ (or, in \_\_\_\_\_ years \_\_\_\_\_ or in \_\_\_\_\_ months, from this day) with interest from this day: and if not then paid, to be levied upon his goods and chattels, lands and tenements, and for want thereof, upon his body. In witness whereof said \_\_\_\_\_ hath hereto set his hand.

\_\_\_\_\_, Clerk of the Superior Court for the County of \_\_\_\_\_

interest upon.  
R. S. 118, § 3.

SECT. 3. The clause as to the payment of interest may be altered or wholly omitted according to the agreement of the parties; but interest



shall always be allowed for any delay after the time of payment, unless the recognizance contains an express agreement to the contrary.

SECT. 4. The recognizance shall be attested by the clerk, whether taken in term time or vacation, and shall be recorded at length by him among the records of the court, and the original shall then be delivered to the conusee. It shall not be taken unless the judge or clerk who takes it knows, or has satisfactory evidence, that the person offering to enter into such recognizance is the person he represents himself to be, and who is described as the conusor.

Recognizance to be recorded.  
Conusor must be known.  
R. S. 118, §§ 4, 5.

SECT. 5. If the debt is not paid at the time appointed in the recognizance, the conusee shall be entitled to an execution for the sum due, to be sued out of the clerk's office in which the recognizance is recorded, and to be directed, served, and returned, in like manner as an execution issued upon a judgment of the same court.

Execution may be issued;  
R. S. 118, § 6.

SECT. 6. Before such execution issues, the original recognizance shall be filed with the clerk, who shall compute the amount, deducting any payments indorsed; he shall then issue execution, which shall recite the recognizance, state the amount then due, and otherwise be in the usual form of an execution on a judgment for debt. It may be issued by the clerk without any special order of the court.

proceedings for obtaining.  
Form, &c.  
R. S. 118, §§ 7, 8.  
8 Mass. 79.

SECT. 7. A recognizance for debt may be taken before a justice of the peace, or police court, in any case where it might be taken before the clerk of the court. It shall be substantially in the same form, recorded in a book kept for the purpose, and delivered to the conusee; and execution may be issued thereon by the justice or court. Such executions shall have the same effect as executions issued by the clerk, except that where the recognizance is for twenty dollars or less, the execution shall not run against the lands of the conusee.

Recognizance may be taken before a justice of the peace, &c.  
Execution.  
R. S. 118, §§ 9, 10, 11.  
1863, 269, § 1.

SECT. 8. Executions issued under this chapter may be executed and shall be obeyed in every county to which they are directed.

Executions, where to run;  
R. S. 118, § 12.  
how taken out by an executor or administrator.  
R. S. 118, § 13.

SECT. 9. If the conusee dies before the debt is paid, his executor or administrator may sue out execution in the same manner as the conusee might have done, upon exhibiting to the clerk or justice his letters testamentary or of administration; and the form of the execution shall be altered accordingly.

SECT. 10. If the conusor dies before the debt is fully paid, no execution therefor shall be issued as of course, but the estate of the conusor in the hands of his executors, administrators, heirs, or devisees, shall be liable for the debt in like manner as if judgment therefor had been recovered against him in his lifetime; and the conusee, his executors, or administrators, may have a *scire facias*, or an action of contract, to recover the same against the executors, administrators, heirs, or devisees, of the conusor, in like manner as they might have had upon such a judgment.

Proceedings in case of death of conusor.  
R. S. 118, § 14.  
1862, 312.

SECT. 11. No original execution shall be issued as of course upon such a recognizance after the expiration of three years from the time therein set for payment of the debt, or three years from the time of the last payment indorsed thereon; but the conusee or his executors or administrators may after that time have a *scire facias*, or an action of contract on it against the party liable, in like manner and with the same effect as upon a judgment.

Limitation as to issuing of execution.  
R. S. 118, § 15.  
1862, 312.  
4 Mass. 641.  
13 Mass. 498.

SECT. 12. The creditor shall be entitled to an alias and other successive executions, as allowed in executions on a judgment in civil actions.

Alias, &c., executions may issue.  
R. S. 118, § 16.

SECT. 13. If there are several conusors or conusees, and one or more of them dies before the debt is fully satisfied, the right and interest of the surviving conusees, and the obligation of the surviving conusors, and all the proceedings for the recovery of the debt, shall be substantially the same as in the case of the death of one or more joint creditors or debtors in a judgment at common law.

Death of one of several conusors or conusees.  
R. S. 118, § 17.

*Audita querela*,  
&c., as in case of  
a judgment.  
R. S. 118, § 18.

SECT. 14. If a person is injured by the wrongful suing out or executing of any execution under the provisions of this chapter, he shall have his remedy by a writ of *audita querela*, or otherwise, as if the execution had been issued upon a judgment; and in all cases not otherwise specially provided for, the parties to such recognizance, and their respective representatives, shall be entitled and liable to the remedies provided for creditors and debtors by a judgment.

Fees.  
R. S. 118, § 19.

SECT. 15. The fee for taking and recording a recognizance shall be fifty cents; and for all other services under the provisions of this chapter, the same fees shall be paid as for like services in other cases.

## CHAPTER 153.

### OF SEIZING AND LIBELLING FORFEITED GOODS.

#### SECTION

1. Goods forfeited to be seized.
2. Libel, when to be filed, and form thereof;
3. before whom to be filed.
4. Duties of the clerk of the court when libel is filed. Notice to be published.
5. Proceedings when there is no claimant;
6. when a claimant appears.
7. Decree of forfeiture, or restitution.
8. Disposition of the proceeds on sale under a decree.
9. Damages for seizure without reasonable cause.
10. Costs.
11. Executions and other processes.

#### SECTION

12. Either party may appeal to S. J. C.
13. Proceedings on a libel before a justice, &c.
14. Notice, trial, and adjudication.
15. Either party may appeal to superior court, &c.
16. Depositions may be taken, &c.
17. Goods to be delivered to claimant, on his giving bond.
18. Goods to be appraised.
19. Same subject.
20. Appraisement conclusive as to jurisdiction.
21. Goods may be sold, if perishable;
22. for other sufficient cause.

Goods forfeited to  
be seized.  
R. S. 118, § 20.  
See Ch. 49, §§ 23,  
26, 56, 77, 101,  
124, 154, 164, 194;  
Ch. 50, § 7.  
103 Mass. 467.

SECTION 1. When goods are forfeited for any offence, and no special provision is made for the mode of their recovery, any person entitled to recover them, and when provision is not otherwise made, any police officer or constable of the city or town where the goods so forfeited are found, may seize and keep them safely until they are disposed of as is hereinafter provided.

Libel, when to be  
filed, and form  
thereof;  
R. S. 118, § 21.  
15 Gray, 166.

SECT. 2. The person making the seizure shall within fourteen days thereafter file a libel in the clerk's office of the superior court for the county where the offence was committed, or before any justice of the peace, or police court, as the case requires, stating briefly the cause of the seizure, without setting forth all the special matter, and praying for a decree of forfeiture according to the provisions of the statute on which the seizure is founded, referring to it in the following form: "according to the provisions of the law concerning the packing and stamping of paper," or, "the inspection of lime," (as the case may require,) and mentioning the number of the chapter of the statute referred to, or referring thereto in some other general terms.

before whom to  
be filed.  
R. S. 118, §§ 22,  
34.  
1852, 314.  
1855, 449.

SECT. 3. If the value of the goods seized exceeds twenty dollars, the libel may, and if such value exceeds one hundred dollars, shall, be filed in the clerk's office; otherwise it shall be filed before a justice of the peace, or police court, in the county where the offence is committed, and the value for this purpose shall be ascertained by an appraisal as hereinafter provided for.

Duties of clerk.  
Notice to be pub-  
lished.  
R. S. 118, § 23.

SECT. 4. Upon filing the libel in the clerk's office, he shall make out an advertisement setting forth briefly the substance of the libel, and giving notice to all persons interested to appear at the term of the court to be held next after the expiration of twenty-one days from the

time of filing the libel, and show cause why the goods should not be decreed forfeited; which notice the libellant shall cause to be published twice at least in some newspaper printed in the county, if there is any, otherwise in a newspaper printed in the nearest county, the first publication to be not less than fourteen days before the beginning of the term.

SECT. 5. The libel shall be entered like civil actions; and if after proclamation made no claimant appears, the court shall hear and determine the cause, and decree a forfeiture, restoration, or other disposition of the goods, as law and justice require.

Proceedings when there is no claimant; R. S. 118, § 24.

SECT. 6. If a claimant appears, he may allege and answer any matter that may be necessary or proper for his defence; and the further proceedings shall be conducted in the mode usual in courts that proceed according to the course of the civil law, except that all questions of fact shall be tried and determined by a jury.

when a claimant appears. R. S. 118, § 25.

SECT. 7. If upon the trial the libellant maintains his suit, the court shall decree a forfeiture and sale of the goods, and a distribution of the proceeds, or such other disposition thereof as law and justice require. If he fails to maintain it, the court shall decree a restitution of the goods to the claimant.

Decrees of forfeiture, or restitution. R. S. 118, § 26.

SECT. 8. When goods are sold under such decree, the proceeds shall be applied, under the direction of the court, to the payment of the expenses of the seizure, prosecution, and sale; and in default of any other provision for the disposition of the residue, it shall be paid to the party who made the seizure.

Disposition of the proceeds on sale under a decree.

SECT. 9. If the jury find that the seizure was groundless and without probable cause, they shall assess reasonable damages for the claimant, and the court shall render judgment for such damages with costs.

Damages for seizure without reasonable cause. R. S. 118, § 27.

SECT. 10. In all other cases the court shall award costs to the prevailing party, or may order the costs and charges of keeping and selling the goods, or any part thereof, to be paid out of the proceeds of the goods.

Costs. R. S. 118, § 28.

SECT. 11. They may issue execution in common form for all costs and damages awarded to either party, and such warrants and other processes as may be necessary or proper to carry into effect any other parts of their decree or judgment.

Executions and other processes. R. S. 118, § 29.

SECT. 12. Either party aggrieved by a decree of the court founded upon matter of law apparent on the record, may appeal therefrom to the supreme judicial court, and such appeal shall be claimed, prosecuted, and determined, as provided for appeals in other civil cases.

Either party may appeal to S. J. C. R. S. 118, § 30. 1840, 87.

SECT. 13. If the libel is filed before a justice of the peace, or a police court, the justice or court shall make out an advertisement or notice like that before required to be made by the clerk, mentioning the time and place appointed for hearing the cause.

Proceedings on a libel before a justice, &c. R. S. 118, §§ 31, 34.

SECT. 14. The libellant shall cause the notice to be posted up in some public place in the county not less than seven days before the time appointed for hearing the cause, when any claimant may appear and answer to the suit; and it shall be heard and determined in all respects as herein prescribed for a trial in the superior court; but a jury shall be allowed only upon the same terms as in other civil cases.

Notice, trial, and adjudication. R. S. 118, § 32. 1852, 314.

SECT. 15. Either party aggrieved by any decree of such justice or court may appeal therefrom to the superior court, and the appeal shall be conducted in all respects like appeals in other civil cases, and the cause shall be heard and determined in the court appealed to, according to the provisions of this chapter.

Either party may appeal to superior court, &c. R. S. 118, §§ 33, 34.

SECT. 16. Depositions may be taken and used in like manner as in trials of actions at the common law.

Depositions may be taken, &c. R. S. 118, § 35.

SECT. 17. At any time after the seizure of goods alleged to be forfeited, the owner, or any person entitled or authorized to claim the same, may have them delivered to him, upon giving bond to the person who

Goods to be delivered to claimant on his giving bond.

R. S. 118, § 38.

made the seizure, with sufficient surety in double the value of the goods, conditioned to restore them or pay the appraised value thereof if they are decreed forfeited, and to abide by and perform the final order, decree, or judgment, of the court relating thereto.

Goods to be appraised.

R. S. 118, § 37.

SECT. 18. The value of the goods in such case shall be appraised and determined by three disinterested men, to be agreed on by the parties or appointed by any justice of the peace to whom the claimant applies for that purpose, and to be sworn; or if the appraisement is made after the libel is filed, the appraisers shall be appointed by the court or justice before whom the suit is pending.

Same subject.

R. S. 118, § 38.

SECT. 19. The person making the seizure, as soon as may be thereafter, unless an application for an appraisement is in the mean time made by a claimant, shall apply to a justice of the peace, who shall appoint three disinterested men to make an inventory and appraisement of the goods seized. Such appraisers shall be sworn, and shall return their inventory and appraisement to the court or justice before whom the suit is brought.

Appraisement conclusive as to jurisdiction.

R. S. 118, § 39.

SECT. 20. The appraisement thus made on the application of the person who made the seizure, shall be conclusive as to the jurisdiction of the court before which the suit is to be brought, unless before filing the libel a different appraisement is made upon the application of a claimant in the manner before provided; in which case such last-mentioned appraisement shall be conclusive in that respect.

Goods may be sold if perishable;

R. S. 118, § 40.

SECT. 21. When goods so seized are perishable and liable to depreciate in value by keeping, and the fact is certified by the appraisers appointed on the application of the person making the seizure, any justice of the peace, or police court, may by an order indorsed on the inventory, authorize a sale by auction of such perishable goods, which sale shall be made at such time and with such notice as shall be directed in the order.

for other sufficient cause.

R. S. 118, § 41.

SECT. 22. The preceding section shall not control or affect the power of the court in which the suit is pending to order a sale of the goods for any sufficient cause at any time during the pendency of the suit.

## TITLE V.

### OF THE LIMITATION OF ACTIONS.

CHAPTER 154. — Of the Limitation of Real Actions and Rights of Entry.

CHAPTER 155. — Of the Limitation of Personal Actions.

## CHAPTER 154.

### OF THE LIMITATION OF REAL ACTIONS AND RIGHTS OF ENTRY.

#### SECTION

1. No action, &c., after twenty years, except, &c.
2. Right first accruing to an ancestor, how computed, &c.

#### SECTION

3. Time when the limitation begins to run.
4. Limitation after disclaimer of a sole occupation.
5. Exceptions for certain disabilities.

## SECTION

6. Death of persons under disabilities.
7. No allowance for second disability.
8. Entry on land, when effectual.
- 9, 10. Estates tail barred like estates in fee.
11. When limitations to take effect.
12. Suits by commonwealth limited.

## SECTION

13. Descent, &c., not to bar right.
14. Notice to prevent an easement to be deemed disturbance thereof.
15. On reversal or arrest of judgment, &c., new action may be brought.

SECTION 1. No person shall commence an action for the recovery of lands, nor make an entry thereon, unless within twenty years after the right to bring such action or make such entry first accrued, or within twenty years after he, or those from, by, or under whom he claims, have been seised or possessed of the premises, except as is hereinafter provided. 11 Gray, 33. 2 Allen, 306. 3 Allen, 323. 11 Allen, 584. See 1861, 100. 1862, 183.

SECT. 2. If such right or title first accrued to an ancestor or predecessor of the person who brings the action or makes the entry, or to any other person from, by, or under whom he claims, the twenty years shall be computed from the time when the right or title so first accrued. Right first accruing to an ancestor, how computed, &c. R. S. 119, § 2.

SECT. 3. In the construction of this chapter, the right to make an entry or bring an action to recover land shall be deemed to have first accrued at the times respectively hereinafter mentioned, that is to say, — Time when the limitation begins to run. R. S. 119, § 3.

First. When any person is disseised, his right of entry or of action shall be deemed to have accrued at the time of such disseisin :

Second. When he claims as heir or devisee of one who died seised, his right shall be deemed to have accrued at the time of such death, unless there is a tenancy by the curtesy or other estate intervening after the death of such ancestor or deviser ; in which case, his right shall be deemed to accrue when such intermediate estate expires, or when it would have expired by its own limitation :

Third. When there is such an intermediate estate, and in all other cases when the party claims by force of any remainder or reversion, his right, so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof for which he might have entered at an earlier time : 9 Mass. 508. 15 Mass. 471.

Fourth. The preceding clause shall not prevent a person from entering when entitled to do so by reason of any forfeiture or breach of condition ; but if he claims under such a title, his right shall be deemed to have accrued when the forfeiture was incurred or the condition was broken :

Fifth. In all cases not otherwise specially provided for, the right shall be deemed to have accrued when the claimant or the person under whom he claims first became entitled to the possession of the premises under the title upon which the entry or the action is founded. 8 Met. 90.

SECT. 4. If any minister or other sole corporation is disseised, any of his successors may enter upon the premises, or bring an action for the recovery thereof, at any time within five years after the death, resignation, or removal of the person so disseised, notwithstanding the twenty years after such disseisin have expired. Limitation after disseisin of a sole corporation. R. S. 119, § 4.

SECT. 5. If at the time when such right of entry or of action upon or for lands first accrues, the person entitled to such entry or action is within the age of twenty-one years, or disabled by marriage, insane, imprisoned, or absent from the United States, such person, or any one claiming from, by, or under, him, may make the entry or bring the action at any time within ten years after such disability is removed, notwithstanding the twenty years before limited in that behalf have expired. Exceptions for certain disabilities. R. S. 119, § 5. 2 Allen, 306. 3 Allen, 323. 10 Allen, 557. See 1862, 183.

SECT. 6. If the person first entitled to make such entry or bring such action dies during the continuance of any of the disabilities mentioned Death of persons under disabilities.

R. S. 119, § 6.

in the preceding section, and no determination or judgment has been had of or upon the title, right, or action, which accrued to him, the entry may be made or the action brought by his heirs, or any other person claiming from, by, or under, him, at any time within ten years after his death, notwithstanding said twenty years have expired.

No allowance for second disability.  
R. S. 119, § 7.  
6 East, 80.  
6 Mass. 328.

SECT. 7. If, at the time when such right of entry or action first accrues, the person entitled thereto is under any of the disabilities before mentioned, and dies without having recovered the premises, no further time for making such entry or bringing such action, beyond what is herein before prescribed, shall be allowed by reason of the disability of any other person.

Entry on land, when effectual.  
R. S. 119, § 8.  
2 Met. 588.  
8 Met. 804.

SECT. 8. No person shall be deemed to have been in possession of any lands within the meaning of this chapter merely by reason of having made an entry thereon, unless he has continued in open and peaceable possession of the premises for one year next after such entry, or unless an action is commenced upon such entry and seisin within one year after he is ousted or dispossessed.

Estates tail barred like estates in fee.  
R. S. 119, § 9.

SECT. 9. When the right of entry or action of a tenant in tail, or person entitled to a remainder in tail, is barred by force of this chapter, the estate tail, and all remainders and reversions expectant thereon, shall be also barred, as fully as they might have been by a conveyance made by the tenant in tail in the manner provided in chapter eighty-nine.

Same subject.  
R. S. 119, § 10.

SECT. 10. When a person entitled to recover land as a tenant in tail, or remainder-man, dies before the expiration of the period herein before limited for making an entry or bringing an action therefor, no person claiming any estate which the tenant in tail or remainder-man might have barred, shall make an entry or bring an action to recover such land, except within the period during which the tenant in tail or remainder-man, if he had so long lived, might have made such entry or brought such action.

When limitations to take effect.  
R. S. 119, § 11.  
10 Allen, 585.

SECT. 11. The limitations herein before prescribed as to the time within which an action may be brought to recover land, take effect from and after the thirty-first day of December in the year of our Lord eighteen hundred and thirty-nine; and if any person then entitled to bring any real action abolished after that day was then within the age of twenty-one years, a married woman, insane, imprisoned, or without the limits of the United States, the action may be brought at any time within five years after the disability ceased, or after the death of the person so disabled: *provided*, that no such action shall be maintained after it would have been barred by this chapter and by the statutes of limitation in force on the last day of April one thousand eight hundred and thirty-six.

Suits by commonwealth limited.  
R. S. 119, § 12.  
1852, 258, § 2.  
1854, 261, § 9.  
4 Mass. 528.  
9 Met. 167.  
1 Cush. 427.  
6 Allen, 20.  
98 Mass. 39.  
See 1867, 275.

SECT. 12. No suit for or in behalf of the common right or title of the common twenty years after the common it claims have been seised visions of this section shall the town of Provincetown, basins of Back Bay mention fifty-three, of the statutes of

Descent, &c., not to bar right.  
R. S. 119, § 13.

SECT. 13. No descent of any right of entry or action

Notice to prevent an easement to be deemed disturbance thereof.  
R. S. 119, § 14.  
1862, 812.

SECT. 14. When notice or privilege of way or any ninety, such notice shall be in question, as to enable the of tort as for a nuisance o

right; and if the plaintiff in such action prevails, he shall be entitled to full costs, although he recovers only nominal damages.

SECT. 15. If an action of which the commencement is limited by this chapter, is abated by the death of any party thereto, or if after verdict for the demandant or plaintiff the judgment is arrested, or if judgment in any such action is given for the demandant or plaintiff and the judgment is reversed for error therein, the demandant or plaintiff, or any person claiming from, by, or under, him, may bring a new action for the same cause, at any time within one year after the determination of the original action, or after the reversal of the judgment therein.

On reversal or arrest of judgment, &c., new action may be brought.  
R. S. 119, § 15.

## CHAPTER 155.

### OF THE LIMITATION OF PERSONAL ACTIONS.

#### SECTION

1. Certain actions to be brought within six years;
2. within two years;
3. within four years.
4. Exceptions as to certain notes, &c.;
5. as to suits on mutual accounts current;
6. for certain disabilities.
7. Limitation of twenty years.
8. Suits by aliens.
9. Defendants out of state.
10. Time extended upon the death of either party;
11. in case of reversal, arrest of judgment, &c.

#### SECTION

12. Time extended in case of fraudulent concealment by defendant.
13. New promise, &c., to be in writing.
14. Promise by one of several debtors.
15. Proceedings in action against such debtors;
16. In abatement.
17. Effect of part payment; of indorsements.
18. Limitation of demands filed in set-off.
19. Suits by commonwealth limited.
20. Limitation of suits for penalties, by private persons;
21. of such suits by commonwealth;
22. of suits by other statutes.
23. Presumption of payment of judgment.

SECTION 1. The following actions shall be commenced within six years next after the cause of action accrues, and not afterwards:—

First. Actions of contract founded upon any contract or liability not under seal, express or implied, except such as are brought upon a judgment or decree of some court of record of the United States, or of this or some other of the United States:

Second. Actions for arrears of rent, except upon leases under seal:

Third. Actions of replevin, and all other actions for taking, detaining, or injuring, goods or chattels:

Fourth. All actions of tort except those hereafter mentioned.

See Ch. 65,	Ch. 146, § 11.	3 Allen, 42.	8 Allen, 261.	99 Mass. 504.
§§ 10, 16.	Ch. 146, § 5.	7 Allen, 209, 274,	9 Allen, 150.	106 Mass. 568,
Ch. 129, § 78.	12 Gray, 86.	499.	10 Allen, 268.	588.

SECT. 2. Actions for assault and battery, and for false imprisonment, and actions for slanderous words and for libels, shall be commenced within two years next after the cause of action accrues, and not afterwards.

Ch. 97, §§ 5, 9. Ch. 111, § 16. See 1861, 177.

SECT. 3. Actions against sheriffs for the misconduct or negligence of their deputies shall be commenced within four years next after the cause of action accrues, and not afterwards.

SECT. 4. None of the foregoing provisions shall apply to any action brought upon a promissory note signed in the presence of an attesting witness, if the action is brought by the original payee or his executor or administrator; nor to an action brought upon bills, notes, or other evidences of debt, issued by a bank.

1 Met. 21.	7 Met. 227.	1 Cush. 278.	5 Cush. 442.	1 Gray, 261.
4 Met. 219, 587.	18 Met. 128.	4 Cush. 178.	6 Cush. 139, 172.	3 Allen, 42.

SECT. 5. In actions of contract brought to recover the balance due upon a mutual and open account current, the cause of action shall be

Actions within six years;  
R. S. 120, § 1.  
2 Galles, 471.  
1 Mason, 248.  
2 Mason, 311.  
7 Pick. 168.  
22 Pick. 430.  
4 Met. 164.  
7 Met. 227.  
9 Met. 182, 197.  
11 Met. 210.  
18 Met. 251.  
1 Cush. 467.  
4 Gray, 388.  
6 Gray, 515.

within two years;  
R. S. 120, § 2.  
4 Gray, 286.  
See Ch. 70, § 12.

within four years.  
R. S. 14, § 78.  
R. S. 120, § 8.

Exception as to certain notes, &c.;  
R. S. 120, § 4.  
16 Mass. 280, 314.  
4 Pick. 382.  
8 Pick. 246.  
28 Pick. 262.

as to suits on mutual accounts current.

115 Ch. 574. 579





SECT. 14. If there are two or more joint contractors, or joint executors or administrators of a contractor, no one of them shall lose the benefit of the provisions of this chapter so as to be chargeable by reason only of an acknowledgment or promise made or signed or by a payment made by any other or others of them.

4 Pick. 382.

5 Met. 168.

6 Met. 504.

6 Cush. 380.

2 Allen, 245.

Promise by one of several debtors.  
R. S. 120, §§ 14, 18.  
7 Greenl. 23.  
2 Pick. 581.  
8 Pick. 291.

SECT. 15. In actions commenced against two or more joint contractors, or joint executors or administrators of a contractor, if it appears on the trial or otherwise that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but is entitled to recover against any other or others of them by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff as to the defendants against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff.

Proceedings in action against such debtors;  
R. S. 120, § 15.

SECT. 16. If in an action of contract the defendant pleads or answers in abatement that any other person ought to have been jointly sued, and issue is joined thereon, and if it appears that the action was by reason of the provisions of this chapter barred against the person so named, the issue shall be found for the plaintiff.

in abatement.  
R. S. 120, § 16.  
106 Mass. 600.

SECT. 17. Nothing contained in the four preceding sections shall alter, take away, or lessen, the effect of a payment of any principal or interest made by any person; but no indorsement or memorandum of any such payment written or made upon a promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment is made, or purports to be made, shall be deemed sufficient proof of the payment, so as to take the case out of the provisions of this chapter.

Effect of part payment; of indorsements.  
R. S. 120, § 17.  
2 Met. 168.  
6 Met. 569, 594.  
8 Met. 354.  
9 Met. 485.  
6 Cush. 173.  
7 Gray, 274.  
12 Cush. 324.

SECT. 18. The provisions of this chapter shall apply to the case of any debt founded on contract, alleged by way of set-off on the part of a defendant; and the time of limitation of such debt shall be computed in like manner as if an action had been commenced therefor at the time when the plaintiff's action was commenced.

1 Gray, 450.

11 Allen, 523.

97 Mass. 13.

Limitation of demands filed in set-off.  
R. S. 120, § 19.  
18 Pick. 621.

SECT. 19. The limitations herein before prescribed shall apply to actions brought by the commonwealth, or for its benefit.

6 Allen, 20.

Suits by commonwealth limited.  
R. S. 120, § 20.

SECT. 20. All actions and suits for a penalty or forfeiture on a penal statute, brought by any person to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year next after the offence is committed, and not afterwards.

Limitation of suits for penalties by private persons;  
R. S. 120, § 21.  
11 Cush. 512.

8 Gray, 135.

6 Gray, 388.

13 Allen, 589.

SECT. 21. If the penalty or forfeiture is given in whole or in part to the commonwealth a suit therefor may be commenced by or in behalf of the commonwealth at any time within two years after the offence is committed, and not afterwards.

of such suits by commonwealth;  
R. S. 120, § 22.

SECT. 22. The provisions of this chapter shall not apply to any action otherwise specially limited by law.

See Ch. 123, §§ 20, 35.

Ch. 124, § 46.

Ch. 143, § 23.

of suits by other statutes.  
R. S. 120, §§ 4, 23.

SECT. 23. Every judgment and decree in any court of record of the United States, or of this or any other state, shall be presumed to be paid and satisfied at the expiration of twenty years after the judgment or decree was rendered.

Presumption of payment of judgment.  
R. S. 120, § 24.  
22 Pick. 633.

## TITLE VI.

## OF COSTS AND THE FEES OF CERTAIN OFFICERS.

CHAPTER 156. — Of Costs in Civil Actions.

CHAPTER 157. — Of the Fees of Certain Officers.

## CHAPTER 156.

## OF COSTS IN CIVIL ACTIONS.

## SECTION

1. Prevailing party entitled to costs;
2. except when action discontinued, &c., by discharge in insolvency;
3. after joinder of issue upon discharge in insolvency, &c.
4. Costs on appeal from a justice of the peace, &c.;
5. in actions commenced in S. J. C., &c., when plaintiff recovers only \$20, &c.;
6. when plaintiff's claim is reduced by set-off;
7. when plaintiff does not recover \$800 damage, &c., to recover no costs;
8. when defendant brings money into court;
9. in real actions, replevin, &c.;
10. in actions which might have been joined;
11. of trial on different counts.
12. Proceedings stayed, &c., till costs of former suit paid.
13. Double costs, how taxed.

## SECTION

14. Costs on petition for *certiorari*, &c.;
15. in suits in equity in certain cases;
16. in suits in equity, &c., when no provision is made;
17. in civil suits by commonwealth;
18. when brought in name of state for use of a person;
19. against commonwealth, how paid;
20. for commonwealth, how taxed;
21. power of arbitrators, &c., as to, and of courts in case of amendments, &c., not affected;
22. by whom taxed; notice of taxation.
23. Appeal from taxation by clerk;
24. how conducted.
25. Appellee may take execution in certain cases before appeal is settled.
26. Costs of appeal.
27. Allowance to parties recovering costs.
28. Costs of travel for a corporation.

Prevailing party entitled to costs; R. S. 121, § 1. 7 Met. 590. 11 Met. 238.

except when action discontinued, &c., by insolvency; 1843, 55. 4 Cush. 502.

after joinder of issue upon discharge in insolvency, &c. 1841, 124, § 4. 1848, 267.

Costs on appeal from a justice of the peace, &c.; R. S. 121, § 2.

in actions commenced in S. J. C., &c., when plaintiff recovers only \$20, &c. R. S. 121, § 3. 1859, 196. 8 Cush. 281. 1 Gray, 625.

SECTION 1. In all civil actions, the prevailing party shall recover his costs, except in those cases in which a different provision is made by law.

10 Cush. 812. 4 Gray, 56, 205. 11 Gray, 498. 1 Allen, 212, 292. 3 Allen, 467. 102 Mass. 122.

SECT. 2. If the defendant answers in defence that he is discharged in bankruptcy or insolvency, and the action is discontinued or the plaintiff nonsuited solely in consequence of such answer, the defendant shall recover no costs.

SECT. 3. If a defence is made to rest upon a discharge in bankruptcy or insolvency alone, and an issue is so made up in writing and found for the defendant, he shall recover his costs after, but not before, the joinder of such issue.

SECT. 4. In civil actions before a justice of the peace, or a police court, if the plaintiff appeals from a judgment in his favor, and does not recover in the court above a greater sum for debt or damages than he recovered by the first judgment, he shall not be entitled for his costs of the whole suit to more than one-quarter part of the sum finally recovered for debt or damages.

SECT. 5. In personal actions brought originally in the supreme judicial court, or the superior court, except actions of replevin, if the plaintiff finally recovers a sum not exceeding twenty dollars for debt or damages, he shall be entitled to no costs, except as is provided in the following section.

2 Gray, 214. See Ch. 149, § 25.

11 Gray, 498. 2 Allen, 293.

6 Allen, 248. 10 Allen, 68.

11 Allen, 252. 100 Mass. 191.

102 Mass. 122. See Ch. 149, § 25.

SECT. 6. If the plaintiff's claim as established on the trial exceeds twenty dollars, and is reduced to that amount or less, or overbalanced, by set-offs which could not have been proved in payment, it shall be considered for the purposes of the preceding section as having exceeded twenty dollars, and the party who finally recovers judgment in the suit shall be entitled to his full costs.

6 Allen, 556. 100 Mass. 191.

Costs, when plaintiff's claim is reduced by set-off;

R. S. 121, § 11.  
8 Mass. 536.  
12 Mass. 206.  
2 Cush. 826.  
4 Allen, 400.

SECT. 7. In actions at law brought originally in the supreme judicial court, or removed by consent thereto, if the plaintiff does not recover, either in value of the property claimed or estate in controversy, or in damages, an amount equal to three hundred dollars, to be assessed by the jury who try the cause, or by an assessor agreed upon by the parties, or by an award of arbitrators, he shall recover no costs.

when plaintiff does not recover \$300 damage, &c., to recover no costs;

1869, 196, § 80.

SECT. 8. When a defendant brings money into court and offers the same in satisfaction of the damages, the plaintiff shall be entitled to the costs which had previously accrued, though he may not recover a larger sum than is so brought into court.

when defendant brings money into court;

R. S. 121, § 14.  
12 Pick. 246.

SECT. 9. In real actions and actions of replevin, the party finally prevailing shall recover his full costs without regard to the amount of damages recovered in the action.

in real actions, replevin, &c.,

R. S. 121, § 13.  
1852, 812.

7 Mass. 478.

16 Mass. 448.

4 Pick. 169.

10 Pick. 478.

13 Met. 144.

SECT. 10. When a plaintiff at the same court brings several actions against the same defendant, upon demands which might have been joined in one, he shall recover costs in one action only, unless it appears to the court that the actions affect different rights or interests, or that for other sufficient reasons they ought not to have been joined.

in actions which might have been joined;

R. S. 121, § 15.  
5 Mass. 818.  
6 Mass. 18.  
10 Mass. 175.  
10 Cush. 808.

SECT. 11. When there are two or more counts on several and distinct causes of action, and a verdict is rendered for the plaintiff on one or more of them, and for the defendant on any other or others, each party shall recover his costs paid for the travel and attendance of witnesses, and for depositions and other evidence produced, examined, or used, on the trial of the counts upon which the verdict is in his favor, and shall recover nothing for the like charges incurred on the trial of the other counts.

of trial on different counts.

R. S. 121, § 16.  
1 Met. 291.  
2 Met. 599.  
13 Met. 438.  
2 Cush. 180.  
4 Cush. 148.

SECT. 12. When, after a judgment for costs upon a nonsuit or discontinuance, a second suit for the same cause is brought by the original plaintiff, his executor, or administrator, before the costs of the former suit are paid, the court in which the second suit is pending may order proceedings therein to be stayed until such costs are paid, and may further order that the suit be dismissed unless the costs are paid within the time expressed in the order.

Proceedings stayed, &c., till costs of former suit paid.

R. S. 121, § 17.

SECT. 13. In cases in which a party is entitled to recover double costs, the sums paid as fees to witnesses, and for the costs of taking depositions and procuring evidence, and for copies, and all court dues, shall be taxed and recovered singly, and the remainder only of the taxable costs shall be doubled. The same rule shall apply when treble costs are recovered.

Double costs, how taxed.

R. S. 121, § 18.

SECT. 14. In cases where application is made at the suit or in behalf of a private person for a writ of *certiorari*, *mandamus*, *quo warranto*, or other like process, the court may in its discretion allow costs to any person who appears and objects thereto, and may award judgment and execution against the person by whom, or in whose behalf, the application is made.

Costs on petition for certiorari, &c.,

R. S. 121, § 19.

SECT. 15. In suits in equity in which as to one or more of the defendants the plaintiff seeks merely for a discovery of facts material to his rights and interests in a pending or anticipated suit, and not for a decree against them, the court shall allow such defendants all reasonable costs, expenditures, and charges, by them made or sustained, according to the usual course of proceeding in equity in like cases. Such allowance shall be made notwithstanding any prayer in the plaintiff's

in suits in equity in certain cases.

1841, 129.  
1 Met. 287.

suit for a decree against the defendants, if the court is satisfied that such prayer is either frivolous, a mere pretence, or not essentially connected with the subject matter of the discovery.

Costs in suits in equity, &c., when no provision is made; R. S. 121, § 20. 9 Met. 320.

SECT. 16. In suits in equity and in other civil suits and proceedings in which no provision is expressly made by law, the costs shall be wholly in the discretion of the court, but no greater sum shall be taxed than is allowed for similar charges in suits at common law.

1 Allen, 212.

102 Mass. 89, 125.

104 Mass. 363.

In civil suits by commonwealth; R. S. 121, § 22. 4 Met. 42. 4 Gray, 26.

SECT. 17. In civil suits and proceedings duly instituted by or in the name of the commonwealth, and not on the relation, or in behalf, or for the use, of a private person, the commonwealth shall be liable for costs in like manner and to the same extent as a citizen is liable.

when brought in name of state for use of a person; R. S. 121, § 23.

SECT. 18. When a suit or proceeding is instituted in the name of the commonwealth, on the relation, or in behalf, or for the use, of a private person, such person shall be liable for the costs in like manner, and to the same extent, as if the suit or proceeding had been instituted in his own name, and judgment may be rendered and execution issued therefor.

against commonwealth, how paid; R. S. 121, § 24. (R.) *Repeal and substitute.* 1862, 144.

SECT. 19. (R.) [When a judgment for costs is rendered against the commonwealth, the treasurer of the county where the court is held shall pay the same upon the production of an attested copy of the judgment, and the sum so paid shall be allowed to him in his account with the treasury of the commonwealth.]

for commonwealth, how taxed; R. S. 121, § 25.

SECT. 20. When costs are taxed for the commonwealth as a party in a civil suit or proceeding, no fees shall be taxed or allowed for the travel of the attorney-general or any other attorney for the commonwealth.

power of arbitrators, &c., as to, and of courts in case of amendments, &c., not affected; R. S. 121, §§ 21, 23. 2 Cush. 335.

SECT. 21. Nothing contained in this chapter shall take away or control the power of arbitrators or referees to make such award concerning costs as justice and equity require; nor the power of any court to require costs to be paid by either party, as the condition of an amendment, continuance, or other order, passed at his motion, or to withhold and refuse costs, on like occasions. 8 Allen, 431. 100 Mass. 264.

by whom taxed, notice of taxation; R. S. 121, § 27. 8 Met. 275.

SECT. 22. Bills of costs shall be taxed by the clerk of the court, or in suits before justices of the peace, or courts having no clerk, by the justice. No costs shall be taxed without notice to the adverse party, if he gives seasonable notice in writing to the clerk or justice of his desire to be present at the taxation, or causes such notice to be entered on the docket; and notice given by or to the attorney in the suit shall be equivalent to notice by or to the party himself.

appeal from taxation of by clerk; R. S. 121, § 53. 8 Met. 275.

SECT. 23. Either party may appeal from the taxation by the clerk to the court in which the suit is pending, or any one of the justices thereof.

how conducted. R. S. 121, § 29.

SECT. 24. The appeal shall be heard and determined at the next term or session, unless the party determined before one of the justices thereof to the adverse party determined. In either case the appeal shall be heard and determined on the day when the costs are as is provided in the following sections.

Appellee may take execution in certain cases before appeal is settled. R. S. 121, § 30.

SECT. 25. If the appeal is made by the party who has paid the costs, the other party may take or enforce execution, if he first gives bond to the appellant, or sureties, to be approved by the court or judge, in the amount of the costs, conditioned that the same shall be disallowed on the appeal, and the court or judge shall make thereon.

Costs of appeal. R. S. 121, § 31. 102 Mass. 125.

SECT. 26. The court or judge may allow to either party, as just, the costs of the appeal; and the same may be

awarded in the principal suit, or a separate execution may be issued therefor, as the case may require.

SECT. 27. Parties recovering costs in civil causes shall be allowed as follows:—

For an attorney's fee in the supreme judicial court or superior court, when an issue in law or fact is joined, two dollars and fifty cents; and in all other cases, one dollar and twenty-five cents:

For the declaration in each writ in any justice's or other court, fifty cents:

For a term fee in the supreme judicial court or the superior court, five dollars for each term while the action is pending; but the plaintiff shall be allowed only one term fee if the defendant is defaulted without having appeared:

For attendance before a justice of the peace or police court, thirty-three cents for each day's actual attendance by the party or his attorney; but for not more than three days when the defendant is defaulted without having appeared; nor shall attendance be allowed after the day on which the action is nonsuited, defaulted, continued, or otherwise finally disposed of for the term, which day shall be entered on the docket:

For travel in either of the courts before mentioned, or before a justice of the peace, thirty-three cents for every ten miles' travel; but no allowance shall be made for travel to or from the clerk's office to take out or to carry thereto any writ or process, nor for more than eighty miles out and home, unless the party or some agent or attorney for him actually travels more than forty miles for the special purpose of attending the court in such cause; in which case allowance may be made, in the discretion of the court, according to the distance that is actually travelled.

SECT. 28. When a corporation is entitled to costs, an allowance shall be made for travel as in other cases, and the travel shall be computed from the place where the corporation is situated, if it is in its nature local, otherwise from the place in which its business is chiefly or commonly transacted.

Allowance to parties recovering costs.  
R. S. 121, §§ 82, 83, 84, 86.  
1842, 67.  
1852, 812, § 81.  
1855, 449, § 7.  
1856, 246.  
1 Met. 298.  
9 Met. 818.  
102 Mass. 125.  
See 1861, 168.  
1865, 38.  
1870, 151, § 8.

Costs of travel for a corporation.  
R. S. 121, § 85.

## CHAPTER 157.

### OF THE FEES OF CERTAIN OFFICERS.

#### SECTION

1. Fees of officers;
2. of justices of the peace;
3. of clerks of the courts;
4. of sheriffs;
5. of jailers;
6. of coroners;
7. of constables;
8. of jurors, witnesses, appraisers, commissioners, &c.;
9. of town clerks;
10. of ministers, for marriages;
11. of the secretary of the commonwealth;
12. of registers of deeds;
13. of notaries public.

#### SECTION

14. Fees of recording officers, &c., in cases not specified.
15. "Page" defined.
16. List of fees to be posted up in public offices.
17. Officer to give bill of fees received if required;
18. to indorse fees on writ, &c.
19. District-attorney may refuse to allow fees, &c., in certain cases.
20. Witnesses' fees in certain cases to be adjusted by clerk, &c.;
21. to be refused in certain cases.
22. Officers not to purchase orders, &c.
23. Penalty for making false certificates of witnesses, &c.

SECTION 1. The fees of the several officers hereinafter mentioned, for the services specified with respect to each of them, shall be as follows, viz.:—

Fees of officers;  
R. S. 122.  
See Ch. 168, § 22.

#### JUSTICES OF THE PEACE.

SECT. 2. For a blank writ of original summons, or attachment and summons, seventeen cents, or if issued by a police court, five cents:

of justices of the peace.

Fees of justices of the peace;  
R. S. 122, § 1.  
1848, 71.  
1862, 314, § 9.  
1869, 241.  
See 1880, 191, § 1.  
1886, 259, § 1.  
1870, 380, § 2.

For a subpoena for one or more witnesses, ten cents:

For the entry of an action, or filing a complaint in civil causes, including filing of papers, examining, allowing, and taxing, the bill of costs, and entering up the judgment and recording the same, sixty-one cents:

For the copy of a record or other paper, if less than one page, ten cents; if more than one page, at the rate of twelve cents a page:

For a writ of execution, twenty-five cents:

Taking a recognizance to prosecute an appeal, including principal and surety, twenty cents:

Taking a deposition, fifty cents; for writing the deposition and caption, at the rate of twelve cents a page; and for the notice to the adverse party, twenty cents; the justice shall certify on the deposition his own fees, and those of the deponent:

For administering an oath required by law, except on a trial or examination before himself, whether to one or more persons at the same time,

(S.) Twenty-five cents by 1866, 198, § 2.

(S.) [twenty cents:]

Taking the acknowledgment of a deed, by one or more grantors, if done at the same time, (S.) [seventeen cents:]

Granting a warrant of appraisement of the estates of deceased persons, of strays, forfeited goods, and in all other cases, twenty cents:

Receiving a complaint and issuing a warrant in criminal cases, fifty cents:

Entering a complaint in criminal prosecutions, rendering judgment and recording the same, examining, allowing, and taxing, the costs and filing the papers, seventy-five cents:

For a mittimus for the commitment of any person on a criminal accusation, twenty-five cents:

For the trial of an issue with a jury, one dollar and fifty cents; without a jury, one dollar:

And for travel in the performance of any official duty, at the rate of fifty cents for every ten miles in going and returning, but only one travel shall be allowed for returning papers to any court.

In all cases where the attendance of two or more justices is required, each of them shall be entitled to the fees prescribed, for all services rendered by him personally.

#### CLERKS OF THE COURTS.

of clerks of the courts.  
R. S. 122, §§ 2, 3.  
1863, 389.  
1866, 449, § 14.  
1866, 246.  
See 1880, 191, § 1.

SECT. 3. For the entry of an action, complaint, or petition, in a civil suit or proceeding in court, one dollar; and before the county commissioners, one dollar and twenty-five cents:

For each term during which an action, complaint, or petition, is pending, forty cents:

For a writ of execution, whether in real or personal suits, or proceedings, twenty-five cents:

For the entry of an indictment, presentment, complaint, or information, in a criminal case, including the recording of judgment, taxing costs, and filing papers, sixty-five cents:

For entry of an appearance in a criminal case, ten cents:

For the continuance of a criminal case, twelve cents:

For entering and recording a verdict in a criminal case, twenty cents:

For taking a recognizance, twenty cents:

For a warrant in any criminal suit or proceeding, twenty cents:

For a blank writ of attachment and summons, or an original summons, five cents:

For a writ of review, or other special writ, forty cents:

For a subpoena for one or more witnesses, ten cents:

For a *venire facias* for jurors, six cents:

For any writ not before mentioned, forty cents:

For examining and casting the grand jurors' accounts, and order thereon, thirty cents:

For examining any other account, eight cents:

For the certificate of the proof of a deed in court, twenty cents:

For copies of records and papers containing less than one page, ten cents; one page or more, at the rate of twelve cents a page: See 1865, 259, § 1.

For the warrant for a county tax, twenty cents:

For a warrant to lay out or alter a road, twenty cents:

For all other services as clerks of the county commissioners, the same fees as are allowed in like cases in court.

Fees of clerks of  
the courts;

#### SHERIFFS.

SECT. 4. For the service of an original summons or *scire facias*, either by reading the same or leaving a copy, thirty cents for each defendant on whom service is made. of sheriffs.  
R. S. c. § 10.  
R. S. 122, § 5.  
1843, 75, § 2.  
1845, 162.  
1849, 208.  
1850, 185.  
1859, 267.  
4 Mass. 411.  
See Ch. 17, § 71.  
102 Mass. 519.  
See 1862, 216.  
1864, 274, § 1.  
1865, 101.  
1865, 259, § 1.

For the service of a *capias*, or of an attachment with summons, thirty cents for each defendant on whom it is served, and if the officer, by the direction of the plaintiff or his attorney, makes a special service of such writ, either by attaching property or arresting the body, he shall be entitled to fifty cents for each defendant on whom the writ is so served:

For a copy of any precept, when required by law or furnished to any party at his request, at the rate of twelve cents a page:

For taking bail, and furnishing and writing the bail bond, twenty cents, to be paid by the defendant, and taxed in his bill of costs, if he prevails: 1873 c.c. 204, 222  
1874, 36

For serving a warrant, thirty cents for each person on whom it is served:

For summoning witnesses in civil or criminal cases, ten cents for each witness; and in criminal cases, the court may, under special circumstances allow such further sum as it may judge reasonable:

For dispersing venires for jurors, treasurers' warrants, and proclamations of all kinds, eight cents each, without allowance for travel:

For serving executions in personal actions, and collecting damages or costs on any execution, warrant of distress, or other like process, for any sum not exceeding one hundred dollars, four cents for every dollar; all above one hundred dollars and not exceeding two hundred dollars, two cents for every dollar; and for all above two hundred dollars, one cent for every dollar:

For serving a writ of seisin or possession in real actions, one dollar and ten cents; and if served on more than one piece of land, seventy-five cents for each piece after the first:

For serving an execution upon a judgment for partition, or for assignment of dower, one dollar a day.

For travel in the service of all original writs, executions, warrants, subpoenas, and other like processes, four cents a mile, to be computed from the place of service to the court, or place of return; only one travel to be allowed for the service of any one precept, and if the same precept is served on more than one person, the travel shall be computed from the most remote place of service, with such further travel as was necessary in serving it; if the distance from the place of service to the place of return exceeds fifty miles, only one cent a mile shall be allowed for all travel exceeding that distance:

For the attendance of a deputy sheriff upon a court of record, or a meeting of the county commissioners, by their order, two dollars a day; and for travel out and home once a week during the attendance, four cents a mile, to be paid out of the county treasury:

See 1864, 274.  
1865, 101.

See 1862, 102.  
1863, 190.  
1872, 331.

Fees of sheriffs.  
See 1860, 191, § 1.

For returning to the office of the secretary of the commonwealth the votes for state, county, and district officers, one travel for the whole, at the rate of eight cents a mile, to be computed from the place of his abode to the secretary's office; for serving precepts for the election of representatives in congress, fifty cents each, and for returning the votes at such elections, eight cents a mile, to be computed as aforesaid; for the service of subpoenas issued by order of the legislature or either branch thereof, the same fees allowed for the service of subpoenas issued by a court, to be paid out of the treasury of the commonwealth.

And no sheriff, deputy-sheriff, coroner, or constable shall be entitled to any fees for attendance as a witness in a criminal case while he is paid for attending as an officer of the same court, or on the same examination or trial.

#### JAILERS.

SECT. 5. (R.) [For every prisoner committed or discharged in the county of Suffolk, twenty cents.]

#### CORONERS.

SECT. 6. (R.) [For granting a warrant and taking an inquisition on a dead body, three dollars; and if his attendance is required more than one day, two dollars for each day after the first; if a view only is taken, and no inquest is held, two dollars; which fees shall be paid by the state or county, agreeably to the provisions of chapter one hundred and seventy-five, section fourteen; but if the inquisition or view is upon more than one body at the same time, no additional fees shall be allowed.

For other services, fees allowed to sheriffs for like services.]

#### CONSTABLES.

SECT. 7. For serving a venire, twenty-five cents and four cents a mile for travel to the place of return; and for summoning jurors upon a coroner's inquest and attendance thereon, at the rate of ninety cents a day; to be paid out of the county treasury.

For attending a court of record by order of the court, and for services performed there, the fees allowed to deputy-sheriffs in like cases.

For other services, the same fees as are allowed to sheriffs for like services, unless other provision is expressly made.

#### JURORS, WITNESSES, APPRAISERS, COMMISSIONERS, &c.

SECT. 8. For attending as a grand juror or traverse juror in any court, except before a justice of the peace, or police court, two dollars a day for attendance, and eight cents a mile for travel out and home; for attending as a juror before a sheriff, one dollar and seventy-five cents a day, and before a police court, justice of the peace, or coroner, or on any other occasion prescribed by law, one dollar and twenty-five cents a day for attendance, and six cents a mile for travel out and home.

For attending as a witness in a civil or criminal cause in the supreme judicial court, superior court, or before county commissioners, or jury-summoned to assess damages under chapters forty-three, sixty-three, and one hundred and forty-nine, one dollar and twenty-five cents a day; for attendance before a justice of the peace, referees, arbitrators, or police court, or on any other occasion, fifty cents a day, and in all cases, four cents a mile for travel out and home; and each witness shall certify in writing the amount of his travel and attendance:

For attending as a witness in any case pending before the legislature, one dollar and twenty-five cents a day, and if the witness lives out of Boston, four cents a mile for travel to and from his place of abode, to be paid out of the treasury of the commonwealth if he is summoned by the legislature or either branch thereof; but in contested elections

of jailers;  
R. S. 122, § 6.  
1896, 277.  
18 Gray, 439.  
(R.) Repealed  
1864, 270, § 2.

of coroners;  
R. S. 122, § 7.  
1860, 191, § 2, 8.  
(R.) Repealed and  
substitute.  
1871, 241.

of constables;  
R. S. 122, § 8.  
See 1860, 191, § 1.  
1862, 102, 216.  
1864, 274.  
1870, 349.

of jurors, witnesses, appraisers, commissioners, &c.  
R. S. 122, § 10.  
1848, 128, 271.  
1849, 208.  
1852, 314, § 8.  
1854, 326.  
1855, 120, §§ 1, 2.  
1859, 196.  
6 Allen, 514.  
104 Mass. 539,  
542.

See 1860, 41.  
1860, 191, § 1.  
1861, 166.  
1863, 158.  
1866, 121.  
1868, 87.  
1869, 78.  
1870, 151.  
1870, 326.



of members of the house of representatives no party shall be so paid for witnesses, unless the committee by which the case is heard certifies that there was reasonable cause for the attendance of such witnesses.

For the services of appraisers of the estate of deceased persons; appraisers of real estate taken on execution; persons appointed under legal process for assigning dower or making partition of real estate; sheriffs' aid in criminal cases; and of all other private persons performing like service required by law, or in the execution of legal process, when no express provision is made for the compensation therefor; one dollar a day each, and four cents a mile for travel out and home.

Fees of witnesses,  
appraisers, &c.;

#### TOWN CLERKS.

SECT. 9. For entering notice of an intention of marriage and issuing the certificate thereof, and for entering the certificate of marriage filed by persons married out of the state, fifty cents, to be paid by the parties:

For a certificate of a birth or death, ten cents:

For copies of town records and other documents furnished to any person at his request, if containing less than one page, ten cents, and if more, at the rate of twelve cents a page.

of town clerks;  
R. S. 122, §§ 11,  
12.  
1849, 202, § 2.  
1850, 121, § 4.

#### MINISTERS, &c., FOR MARRIAGES.

SECT. 10. For lawfully solemnizing and certifying a marriage by a minister or justice of the peace, one dollar and twenty-five cents.

of ministers,  
&c., for mar-  
riages;  
R. S. 122, § 11.

#### SECRETARY OF THE COMMONWEALTH.

SECT. 11. (R.) [For a copy of any resolve or order of the legislature, or of the governor and council, of a private or local nature, furnished to any private person, fifty cents:

For copies of all other papers so furnished, at the rate of twelve cents a page.]

of the secretary  
of the common-  
wealth;  
R. S. 122, § 12.  
See Ch. 14, § 3.  
(R.) *Repeal and  
substitute.*  
1868, 281, § 5.

#### REGISTER OF DEEDS.

SECT. 12. For entering and recording a deed or other paper, certifying the same on the original, and indexing it, and for all other duties pertaining thereto, twenty-five cents; and if it contains more than one page, at the rate of twenty cents for each page after the first; to be paid when the instrument is left for record:

For all copies, at the rate of twenty cents a page:

For entering in the margin a discharge of a mortgage, twenty-five cents.

of registers of  
deeds;  
1855, 811, § 1.  
See 1885, 114.  
1886, 259, § 1.  
1886, 151.

#### NOTARIES PUBLIC.

SECT. 13. For the protest of a bill of exchange, order, draft, or check, for non-acceptance or non-payment, or of a promissory note for non-payment, if the amount thereof is five hundred dollars or more, one dollar; if it is less than five hundred dollars, fifty cents; for recording the same, fifty cents; for noting the non-acceptance or non-payment of a bill of exchange, order, draft, or check, or the non-payment of a promissory note, seventy-five cents; for each notice of the non-acceptance or non-payment of a bill, order, draft, check, or note, given to a party liable for the payment thereof, twenty-five cents: *provided*, that the whole cost of protest, including necessary notices and the record, when the bill, order, draft, check, or note, is of the amount of five hundred dollars or upwards, shall not exceed two dollars; and when it is less than five hundred dollars, shall not exceed one dollar and fifty cents; and the whole cost of noting, including recording and notices, shall in no case exceed one dollar and twenty-five cents.

of notaries  
public.  
1830, 98, § 1.  
1 Gray, 176.

## SPECIAL PROVISIONS.

Fees in cases not specified.

R. S. 122, § 21.

1865, 811, §§ 1, 3.

7 Gray, 182.

13 Gray, 77.

102 Mass. 519.

"Page" defined.

R. S. 122, § 22.

List of fees to be

posted up in public

offices.

R. S. 122, § 17.

Officer to give a

bill of fees re-

ceived, if re-

quired;

R. S. 122, § 18.

1862, 812.

to indorse fees

on writ, &c.

R. S. 122, § 9.

District-attorney

may refuse to

allow fees, &c.,

in certain cases.

1865, 180, § 1.

Witnesses' fees in

certain cases to

be adjusted by

clerk, &c.;

1865, 180, § 2.

to be refused in

certain cases.

1864, 389.

Officers not to

purchase orders,

&c.

1865, 180, § 3.

Penalty for mak-

ing false certifi-

cates of witnesses,

&c.

1864, 380.

SECT. 14. In cases not expressly provided for by law, the fees for any official duty or service of recording officers shall be at the same rate as is prescribed in section twelve, and of other public officers at the same rate as those prescribed in this chapter for like services.

SECT. 15. The word "page," when used as the measure of computation, shall mean two hundred and twenty-four words.

SECT. 16. Each of the officers before mentioned, who keeps a public office, shall always keep posted up in some conspicuous and convenient place in his office, a printed or written list of the fees prescribed in this chapter, so far as they relate to him.

SECT. 17. Every officer, upon receiving fees for any official duty or service, shall, if required by the person paying the same, make out in writing a particular account of such fees, specifying for what they respectively accrued; and if he refuses or neglects so to do, he shall forfeit to the party paying the fees three times the amount so paid, to be recovered in an action of tort.

SECT. 18. All travelling fees and fees for the service of writs or precepts of which an officer is required to make a return, shall be indorsed on the writ or precept, or they shall not be allowed.

SECT. 19. When the administration of justice or the progress of business in criminal proceedings is delayed, obstructed, or prevented, by the negligence of a magistrate in certifying and returning recognizances, records, or other official papers, which it is his duty to transmit to a higher court, or in omitting the formalities required by law, the district-attorney, with the approbation of the court, may, either in whole or in part, refuse to allow the fees to which such magistrate would otherwise be entitled.

SECT. 20. When witnesses in criminal trials are in attendance in two or more cases pending at the same time before the same tribunal, they shall not be allowed full travel and attendance in each case, but the clerk of the court, under the direction of the district-attorney, may reduce and apportion the same as may be just and equitable, allowing at least one travel and attendance.

SECT. 21. If on the trial of a criminal case it appears that a witness has induced the defendant to commit the offence with which he is charged, with the intent to appear as a witness against him, the court or magistrate may in his discretion refuse to allow him his fees.

SECT. 22. No sheriff, deputy-sheriff, or other officer, taking the certificates of witnesses in criminal cases, shall purchase or discount, or have any interest in orders drawn or demands upon the treasury by such witnesses.

SECT. 23. Whoever, with a design to defraud, signs, or procures to be signed, a certificate of attendance or travel as a witness before a court, justice of the peace, or reference founded upon any rule of court, in any case in which the witness did not so attend, or for a greater number of days than he actually attended, or for a greater number of miles than he actually travelled, upon which certificate the attendance or travel claimed is allowed in the taxation of costs, shall forfeit thirty dollars for each offence, to be recovered on complaint or indictment to the use of the commonwealth, or by action of tort to the use of any person against whom such excessive costs were taxed, together with four times the whole amount taxed for attendance or travel on such false certificate, and double costs in the action of tort: *provided*, that such complaint, indictment, or action, is commenced within two years after the commitment of the offence.

# PART IV.

## OF CRIMES, PUNISHMENTS, PROCEEDINGS IN CRIMINAL CASES, AND PRISONS.

### TITLE I.

#### OF CRIMES AND PUNISHMENTS.

- CHAPTER 158. — Of the Rights of Persons accused.  
CHAPTER 159. — Of Offences against the Sovereignty of the Commonwealth.  
CHAPTER 160. — Of Offences against the Person.  
CHAPTER 161. — Of Offences against Property.  
CHAPTER 162. — Of Forgery and Offences against the Currency.  
CHAPTER 163. — Of Offences against Public Justice.  
CHAPTER 164. — Of Offences against the Public Peace.  
CHAPTER 165. — Of Offences against Chastity, Morality, and Decency.  
CHAPTER 166. — Of Offences against the Public Health.  
CHAPTER 167. — Of Offences against Public Policy.  
CHAPTER 168. — Of Felonies, Accessories, Abettors, and Attempts to commit Crimes.

### CHAPTER 158.

#### OF THE RIGHTS OF PERSONS ACCUSED.

##### SECTION

1. Persons arrested to be informed of ground of arrest, &c. Penalty for false answers, &c.
2. Officer who arrests, &c., on false pretences, how punished.
3. Offences to be prosecuted by indictment, except, &c.

##### SECTION

4. Party accused may have counsel, &c.
5. Persons indicted, how convicted.
6. Former acquittal, when a bar to subsequent prosecution.
7. when no defence.
8. No person to be punished until legally convicted.

**SECTION 1.** Every person arrested by virtue of process, or taken into custody by an officer in this state, has a right to know, from the officer who arrests or claims to detain him, the true ground on which the arrest is made; and an officer who refuses to answer a question relative to the reason for such arrest, or answers such question untruly, or assigns to the person arrested an untrue reason for the arrest, or neglects on request to exhibit to the person arrested, or any other person acting in his behalf, the precept by virtue of which such arrest is made, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the house of correction not exceeding one year.

Persons arrested to be informed of ground of arrest, &c. Penalty for false answers, &c.  
1862, 224, § 1.

Officer who arrests, &c., on false pretences, how punished. 1862, 224, § 2.

Offences to be prosecuted by indictment, except, &c. R. S. 123, § 1.

Party accused may have counsel, &c. R. S. 123, § 2. Decl. of rights, art. 12.

Persons indicted, how convicted. R. S. 123, § 3. 12 Allen, 166. 1/4 Am. 151. Former acquittal, when bar to subsequent prosecution. R. S. 123, § 4. See 1864, 260, § 4. 12 Gray, 171. 8 Allen, 646. 97 Mass. 867. when no defence. R. S. 123, § 6. 12 Pick. 498.

No person to be punished until legally convicted. R. S. 123, § 6.

SECT. 2. Every officer who arrests, takes into or detains in custody, a person in this state, pretending to have a process when he has none, or pretending to have a different process from that which he has, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the house of correction not exceeding one year.

SECT. 3. No person shall be held to answer in any court for an alleged crime or offence, unless upon indictment by a grand jury, except in the following cases:

First. When a prosecution by information is expressly authorized by statute;

Second. In proceedings before a police court or justice of the peace; and,

Third. In proceedings before courts martial.

SECT. 4. The accused shall at his trial be allowed to be heard by counsel, may defend himself, and shall have a right to produce witnesses and proofs in his favor, and to meet the witnesses produced against him face to face.

SECT. 5. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him by his plea or demurrer, or by the verdict of a jury accepted and recorded by the court.

SECT. 6. No person shall be held to answer on a second indictment for an offence of which he has been acquitted by a jury upon the facts and merits; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or substance of the indictment on which he was acquitted.

SECT. 7. If a person is on his trial acquitted upon the ground of a variance between the indictment and the proof, or upon an exception to the form or substance of the indictment, he may be arraigned again on a new indictment, and tried and convicted for the same offence, notwithstanding such former acquittal.

SECT. 8. No person shall be punished for an offence, unless duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person.

## CH

### OF OFFENCES AGAINST TI

#### SECTION

1. Treason defined.
2. punishment of.

Treason defined. R. S. 124, § 1. Decl. of rights, art. 25.

punishment of 1862, 269, § 1. See Ch. 170, § 64. imprisonment of. R. S. 124, § 3. 1860, 196.

SECTION 1. Treason against the state, levying war against the same, or giving them aid and comfort.

SECT. 2. Whoever commits treason shall be punished by imprisonment

SECT. 3. Whoever, having knowledge of such treason, and does not disclose the same to the judicial court, or the superior court, or the offence of misprision of treason, shall be punished by fine not exceeding one thousand dollars, or by imprisonment five years, or in the jail

SECT. 4. No person shall be convicted of treason but by the testimony of two lawful witnesses to the same overt act of treason whereof he stands indicted, unless he confesses the same in open court.

Treason, two witnesses required to convict of.  
R. S. 124, § 4

CHAPTER 160.

OF OFFENCES AGAINST THE PERSON.

- SECTION
- 1. Murder in first degree.
  - 2. second degree.
  - 3. Degree to be found by jury.
  - 4. Punishment in first degree.
  - 5. second degree.
  - 6. Forms of indictments not changed.
  - 7. Petit treason abolished, &c.
  - 8. Body of murderer may be dissected.
  - 9. Murder in a duel out of state, &c., where prosecuted.
  - 10. Accessory in such duel.
  - 11. Former conviction, &c., out of the state, may be pleaded in bar.
  - 12. Engaging in duel; challenging, &c.
  - 13. Accepting or carrying challenge, and abetting a duel.
  - 14. Posting another, &c.
  - 15. Prize fighting.
  - 16. Aiding, advising, &c., in such fight.
  - 17. Leaving state to fight.
  - 18. Manslaughter.
  - 19. Maiming, disfiguring, or aiding therein.
  - 20. Assault with intent to murder, maim, &c.

- SECTION
- 21. Attempt to murder by poisoning, &c.
  - 22. Robbery, being armed, &c.
  - 23. Assault with intent to rob, or murder, being armed.
  - 24. Robbery, not being armed.
  - 25. Assault with intent to rob or steal, not being armed.
  - 26. Rape.
  - 27. Assault with intent to commit rape.
  - 28. Attempts to extort money, &c., by threats.
  - 29. False accusation with intent that party shall be held as fugitive slave. When made by a public officer, &c.
  - 30. Kidnapping, &c., or selling for slave, &c.
  - 31. where to be prosecuted.
  - 32. Poisoning food, medicines, springs, &c.
  - 33. Assaults not before mentioned, how punished.
  - 34. Loss of life by negligence, &c., of carriers.
  - 35. Negligence, &c., of persons having care of public conveyances.
  - 36. Drivers of stage coaches, &c., leaving horses without charge, &c.

SECTION 1. Murder committed with deliberately premeditated malice aforethought, or in the commission of, or attempt to commit, any crime punishable with death or imprisonment for life; or committed with extreme atrocity or cruelty, is murder in the first degree. 12 Allen, 155.

Murder in first degree.  
1868, 154, § 1.  
11 Gray, 438.  
16 Gray, 1.  
9 Allen, 585.  
second degree.  
1868, 154, § 2.  
Degree to be found by jury.  
1868, 154, § 3.  
Punishment in first degree.

SECT. 2. Murder not appearing to be in the first degree is murder in the second degree.

in second degree.  
1868, 154, § 4.  
Forms not changed.  
1868, 154, § 6.  
12 Allen, 155.  
Petit treason abolished, &c.  
R. S. 138, § 15.

SECT. 3. The degree of murder shall be found by the jury.

SECT. 4. Whoever is guilty of murder in the first degree shall suffer the punishment of death. 1868, 154, § 4.

SECT. 5. Whoever is guilty of murder in the second degree shall be punished by imprisonment in the state prison for life.

SECT. 6. Nothing herein shall be construed to require any modification of the existing forms of indictment. 19 Pick. 304. 5 Cush. 236. 9 Allen, 585.

SECT. 7. The distinction between murder and petit treason is abolished, and the last-named offence shall be prosecuted and punished as murder.

Body of murderer may be dissected.  
R. S. 125, § 2.

SECT. 8. On every conviction of the crime of murder, the court may, in their discretion, order the body of the convict, after his execution, to be dissected, and the sheriff shall in such case deliver it to a professor of anatomy and surgery, in some college or public seminary, if requested; otherwise it shall, unless his friends desire it for interment, be delivered to any surgeon attending to receive it, and who will engage for the dissection thereof.

SECT. 9. Whoever, being an inhabitant or resident of this state, by previous appointment or engagement made within the same, fights a duel without the jurisdiction of the state, and in so doing inflicts a mortal wound upon any person, whereof he afterwards dies within the state,

Murder in a duel out of state, &c., where prosecuted.  
R. S. 125, § 3.

Accessory in  
duel fought out  
of the state, &c.  
R. S. 126, § 4.

Former convic-  
tion, &c., out of  
state, may be  
pleaded in bar.  
R. S. 126, § 6.

Engaging in  
duel; challeng-  
ing, &c.  
R. S. 126, § 6.

Accepting or  
carrying chal-  
lenge; and abet-  
ting a duel.  
R. S. 126, § 7.

Posting another,  
&c.  
R. S. 126, § 8.

Prize fighting.  
1849, 49, § 1.  
7 Gray, 824.  
11 Allen, 268.

Aiding, advis-  
ing, &c., in such  
fight.  
1849, 49, § 2.  
7 Gray, 824.  
11 Allen, 268.

Leaving state  
to fight  
1849, 49, § 3.

Manslaughter.  
R. S. 126, § 9.

Maiming, dis-  
figuring, or aid-  
ing therein.  
R. S. 126, § 10.

shall be deemed guilty of murder within this state, and may be indicted, tried, and convicted, in the county where the death happens.

SECT. 10. Whoever, being an inhabitant or resident of this state, by previous appointment or engagement made within the same, becomes the second of either party in such duel, and is present as a second when such mortal wound is inflicted, whereof death ensues within this state, shall be deemed to be an accessory before the fact to the crime of murder in this state, and may be indicted, tried, and convicted, in the county where the death happens.

SECT. 11. Any person indicted under either of the two preceding sections, may plead a former conviction or acquittal of the same offence in any other state or country, and such plea, if admitted or established, shall be a bar to all further or other proceedings against him for the same offence within this state.

SECT. 12. Whoever engages in a duel with a deadly weapon, although no homicide ensues, or challenges another to fight such duel, or sends or delivers a written or verbal message purporting or intended to be such challenge, although no duel ensues, shall be punished by imprisonment in the state prison not exceeding twenty years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years; and shall be incapable of holding, or of being elected or appointed to, any place of honor, profit, or trust, under the constitution or laws of this state, for the term of twenty years after such conviction.

SECT. 13. Whoever accepts such challenge, or knowingly carries or delivers any such challenge or message, whether a duel ensues or not, and whoever is present at the fighting of a duel with deadly weapons as an aid, second, or surgeon, or advises, encourages, or promotes, such duel, shall be punished by imprisonment in the jail not exceeding one year, or fine not exceeding five hundred dollars; and shall be incapacitated, as mentioned in the preceding section, for the term of five years after such conviction.

SECT. 14. Whoever posts another, or in writing or print uses any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge, shall be punished by imprisonment in the jail not exceeding six months, or by fine not exceeding one hundred dollars.

SECT. 15. Whoever, by previous appointment or arrangement, meets another person and engages in a fight in the state prison not exceeding five thousand dollars.

SECT. 16. Whoever is present as a surgeon, or advises, encourages, or assists in such fight, shall be punished by imprisonment in the state prison not exceeding one thousand dollars.

SECT. 17. Whoever, being an inhabitant or resident of this state, by previous appointment or engagement, engages in a fight with another person, shall be punished by imprisonment in the state prison not exceeding one year, or by fine not exceeding five hundred dollars.

SECT. 18. Whoever commits any offence against the person of another, shall be punished by imprisonment in the state prison not exceeding one thousand dollars, or by fine not exceeding three years.

SECT. 19. Whoever, with malicious intent, or present aiding in the

punished by imprisonment in the state prison not exceeding twenty years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

SECT. 20. Whoever assaults another with intent to murder, or to maim or disfigure his person in any of the ways mentioned in the preceding section, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

Assault with intent to murder, maim, &c.  
R. S. 126, § 11.  
10 Gray, 11.

SECT. 21. Whoever attempts to commit murder by poisoning, drowning, or strangling, another person, or by any means not constituting the crime of assault with intent to murder, shall be punished by imprisonment in the state prison not exceeding twenty years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

Attempt to murder by poisoning, &c.  
R. S. 126, § 12.

SECT. 22. Whoever assaults another, and feloniously robs, steals, and takes, from his person, money or other property which may be the subject of larceny; such robber being armed with a dangerous weapon, with intent if resisted to kill or maim the person robbed; or being so armed wounds or strikes the person robbed; shall be punished by imprisonment in the state prison for life.

Robbery, being armed, &c.  
R. S. 126, § 18.  
1889, 127.  
17 Mass. 359.  
6 Met. 595.  
11 Allen, 20.

SECT. 23. Whoever, being armed with a dangerous weapon, assaults another with intent to rob or murder, shall be punished by imprisonment in the state prison not exceeding twenty years.

Assault with intent to rob, &c., being armed.  
8 Gray, 387.

SECT. 24. Whoever, by force and violence, or assault and putting in fear, feloniously robs, steals, and takes, from the person of another, money or other property which may be the subject of larceny, (such robber not being armed with a dangerous weapon,) shall be punished by imprisonment in the state prison for life, or for any term of years.

Robbery, not being armed.  
R. S. 126, § 15.  
7 Mass. 242.  
8 Met. 453.  
8 Cush. 215.  
12 Allen, 541.

SECT. 25. Whoever, not being armed with a dangerous weapon, assaults another with force and violence, and with intent to rob or steal, shall be punished by imprisonment in the state prison not exceeding ten years.

Assault with intent to rob, &c., not being armed.  
R. S. 126, § 16.

12 Cush. 270. 14 Gray, 388.

SECT. 26. (R.) [Whoever ravishes and carnally knows a female of the age of ten years or more, by force and against her will, or unlawfully and carnally knows and abuses a female child under the age of ten years, shall be punished by imprisonment in the state prison for life.]

Rape.  
1862, 259, § 2.  
19 Pick. 475.  
4 Gray, 7.  
8 Gray, 490.  
105 Mass. 380.

SECT. 27. Whoever assaults a female, with intent to commit a rape, shall be punished by imprisonment in the state prison for any term of years, or for life, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

(R.) Rape and substitute, 1871, 55.

SECT. 28. Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offence, or by such communication maliciously threatens an injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will, shall be punished by imprisonment in the state prison not exceeding fifteen years, or in the house of correction not exceeding ten years, or by fine not exceeding five thousand dollars, or by such imprisonment and fine.

Assault, with intent to commit rape.  
R. S. 126, § 19.  
Attempts to extort money, &c., by threats.  
R. S. 126, § 17.  
1863, 412.  
12 Cush. 88.  
12 Allen, 449.

SECT. 29. Whoever wilfully or falsely accuses another person of a crime or offence, with intent that the party so accused shall be held to answer any process, or be arrested on any process under the act of congress passed September eighteenth, A. D. eighteen hundred and fifty, entitled, "An Act to amend the act respecting fugitives from justice, and persons escaping from the service of their masters," shall be punished by fine of not less than one thousand, nor exceeding three thousand, dollars, and by imprisonment in the jail or house of correction not less than one year nor exceeding five years. A sheriff, constable, or other public officer, who makes such false or wilful accusation, with such intent, shall,

False accusation with intent that party shall be held as fugitive slave.  
When made by public officer, &c.  
1865, 116.

in addition to the above-named penalty, be forever disqualified from holding any office under the laws or constitution of this state.

Kidnapping, &c.,  
or selling for  
slave, &c.  
R. S. 126, § 20.  
12 Met. 56, 78.  
9 Gray, 262.  
6 Allen, 513.

SECT. 30. Whoever, without lawful authority, forcibly or secretly confines or imprisons another person within this state against his will, or forcibly carries or sends such person out of this state, or forcibly seizes and confines, or inveigles, or kidnaps, another person, with intent either to cause him to be secretly confined or imprisoned in this state against his will, or to cause him to be sent out of this state against his will, or to be sold as a slave, or in any way held to service against his will; and whoever sells, or in any manner transfers, for any term, the service or labor of a negro, mulatto, or other person of color, who has been unlawfully seized, taken, inveigled, or kidnapped, from this state, to any other state, place, or country; shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

where to be  
prosecuted.  
R. S. 126, § 21.

SECT. 31. Every offence mentioned in the preceding section may be tried either in the county in which it is committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped, or sold, or whose services are so sold or transferred, is taken, confined, held, carried, or brought; and upon the trial of any such offence, the consent thereto of the person so taken, inveigled, kidnapped, or confined, shall not be a defence, unless it is made satisfactorily to appear to the jury that such consent was not obtained by fraud, nor extorted by duress or threats.

Poisoning food,  
medicines,  
springs, &c.  
R. S. 126, § 22.  
9 Allen, 271.  
108 M. 487  
Assaults not be-  
fore mentioned,  
how punished.  
R. S. 126, § 23.

SECT. 32. Whoever mingles any poison with food, drink, or medicine, with intent to kill or injure another person, or wilfully poisons any spring, well, or reservoir of water, with such intent, shall be punished by imprisonment in the state prison for life, or any term of years.

SECT. 33. Whoever assaults another with intent to commit burglary, robbery, rape, manslaughter, mayhem, or any felony, the punishment of which assault is not herein before prescribed, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

Loss of life by  
negligence, &c.,  
of carriers.  
1840, 80.  
11 Cush. 512.  
6 Gray, 473.

SECT. 34. If the life of any person, being a passenger, is lost by reason of the negligence or carelessness of the proprietor or proprietors of any steamboat, stage coach, or of common carriers of passengers, or by the unfitness or gross negligence or carelessness of their servants or agents, such proprietor or proprietors, and common carriers, shall be punished by fine not exceeding five thousand, nor less than five hundred, dollars, to be recovered by indictment, and paid to the executor or administrator, for the use of the widow and children of the deceased in equal moities; but if there are no children, to the use of the widow, and if no widow, to the use of the next of kin.

See ch. 68, § 37.  
1864, 229, § 37.  
12 Gray, 174.  
18 Allen, 589.

SECT. 35. Whoever, having management or control of or over any steamboat or other public conveyance used for the common carriage of persons, is guilty of gross carelessness or neglect in, or in relation to, the conduct, management, or control, of such steamboat or other public conveyance, while being so used for the common carriage of persons, shall be punished by fine not exceeding five thousand dollars, or by imprisonment in the jail not exceeding three years.

Negligence,  
&c., of persons  
having care of  
public convey-  
ances.  
1868, 418.

SECT. 36. If a driver of a stage coach or other vehicle, for the conveyance of passengers for hire, when a passenger is within or upon such coach or vehicle, leaves the horses thereof without some suitable person to take the charge and guidance of them, or without fastening them in a safe and prudent manner, he may be punished by imprisonment in the jail not exceeding two months, or by fine not exceeding fifty dollars.

Drivers of stage  
coaches, &c.,  
leaving horses  
without charge,  
&c.  
R. S. 51, § 4.



## CHAPTER 161.

## OF OFFENCES AGAINST PROPERTY.

## SECTION

1. Burning dwelling-house, &c.
2. Burning in night meeting-house, &c., of value of \$1000; barn, &c., within curtilage, &c.
3. same in day time.
4. buildings of less value than \$1000, &c., or bridge, ship, &c.
5. wood, fences, corn, grain, trees, soil, &c.
6. Wife liable for burning property of husband.
7. Burning property insured to injure the insurers.
8. Cutting, &c., bell rope, engine, &c., within twenty-four hours of fire.
9. same at time of fire, or preventing alarm or extinguishing of fire.
10. Burglary, being armed, or making an assault.
11. not being armed, &c.
12. Breaking in night building or ship, with intent, &c.
13. Entering in night without breaking, or breaking and entering in day time, &c.
14. Entering dwelling-house in night, or breaking, &c., without putting in fear.
15. Stealing in a building, ship, &c.
16. in a building on fire, or at a fire.
17. Larceny from the person.
18. Larceny of property exceeding in value \$100. Not exceeding \$100.
19. Larceny, or destruction, &c., of will, &c.
20. Allegation of value, &c., not required.
21. Stealing property of value of \$5.
22. Second conviction, or conviction at same term of three larcenies.
23. Larceny of paper designed for bank bills, &c., with intent to pass, &c.
24. Printers, &c., retaining such paper, &c., with intent to pass, &c.
25. Larceny of things annexed to the realty.
26. Accessory to such larceny.
27. Jurisdiction in cases of such larceny.
28. Such larceny may be from one or more tenants. Of property of person deceased. From person unknown.
29. by whom it cannot be committed.
30. Larceny of beasts and birds.
31. Officer making arrest for robbery or larceny to secure, &c., goods stolen.
32. Allowance to prosecutor and officer, on conviction.
33. when prisoners forfeit recognizances, or escape.
34. Making, holding, using, &c., burglarious instruments.
35. Embezzlement of property the subject of larceny.
36. by persons in state treasury.
37. by town, city, or county officers.
38. by agents, clerks, &c.
39. by officers, &c., of banks.
40. Taking by accomplice deemed taking by officers, &c.
41. Embezzlement, &c., by carriers and others.
42. Indictment and evidence. What will not be a variance.
43. Buying, receiving, &c., stolen goods.
44. Effect of restitution of stolen property bought, &c.
45. Receiver of stolen goods tried before thief is convicted.

## SECTION

46. Buying, &c., of embezzled goods, &c.
47. Second conviction and several offences. Common receiver.
48. Unlawful taking of animals, &c., but not with intent to steal, &c.
49. Issuing, &c., certificates of stock, bonds, &c., beyond amount authorized.
50. Fraudulently issuing or transferring certificates of stock, &c.
51. Making false entries, &c., in books of a corporation.
52. Books of corporation evidence.
53. Falsely personating another, &c.
54. Obtaining property by false pretences or tokens.
55. Forging, &c., private labels, trade marks, &c.
56. Selling wares having forged stamps, &c.
57. Obtaining property by tricks at cards, &c.
58. Gross frauds, &c., at common law.
59. Conveying land encumbered, without notice of the encumbrance.
60. Selling land attached, without notice.
61. Concealing mortgaged personal property, &c.
62. Mortgagor selling without consent of mortgagees.
63. Hirer, &c., of personal property, selling without consent.
64. Sale, &c., of collateral security before debt due, &c.
65. Consignee, &c., fraudulently depositing or pledging property, &c.
66. Maliciously destroying, &c., monuments, milestones, guideboards; extinguishing lamps, &c.
67. Wilful injury, &c., to school-house, church, &c., or the furniture, &c., and appurtenances thereof.
68. to house, &c., by exploding gunpowder, &c.
69. Throwing explosive substances into dwellings, &c.
70. oil of vitriol, coal tar, &c.
71. Raising water so as to injure mill. Proviso.
72. Malicious injury to dams, reservoirs, canals, &c.
73. Wilful injury, &c., to ice where taken as merchandise.
74. to bridges, turnpike gates, &c.
75. Passing, &c., toll-bridges, without paying.
76. Wilfully destroying vessels to defraud the owner or insurer.
77. Fitting out vessels with intent to destroy them, &c.
78. Making false invoices, &c., of cargo, to defraud insurer.
79. Making or procuring false protest, &c.
80. Malicious killing, maiming, or poisoning, cattle.
81. Wilful trespasses by cutting timber, wood, grain, &c.
82. Destroying fruit and ornamental trees, &c., injuring houses, fences, &c.
83. Destroying trees, &c., or stealing, &c., in gardens, &c.
84. Wilful trespasses by entering gardens, orchards, &c., with intent, &c. How, when done on the Lord's day, or secretly.
85. Other malicious injuries to personal property.

## SECTION

86. Persons wilfully injuring trees or committing mischief on Lord's day may be arrested, &c., and detained without warrant, not over twenty-four hours.

87. Killing pigeons on, or frightening from, beds.

88. Injury, or removal, &c., of property of Humane Society.

## SECTION

89. Setting fire to coal-pits, on woodland in New Bedford, &c., between March and October.

90. Burning brushwood, &c., on such woodland.

91. Penalties for such burning, how recovered, and to whose use.

*Plantation Rules Act*  
1873 c 349

*Obstructing fire engines 1874, 37*

Burning dwelling house, &c.  
R. S. 126, §§ 1, 2.  
1862, 269, § 8.  
3 Cush. 626.

10 Cush. 478.  
See Ch. 170, § 54.  
See 1871, 76.

Burning in night, meeting-house, &c., of value of \$1000; barn, &c., within curtilage, &c.  
R. S. 126, § 2.  
10 Cush. 480.  
See 1871, 76.  
2 Allen, 159.

same in day time.  
R. S. 126, § 4.

buildings of less value than \$1000, &c., or bridge, ship, &c.  
R. S. 126, § 6.  
1 Met. 258.  
1 Gray, 496.

wood, fences, corn, grain, trees, soil, &c.  
R. S. 126, § 6.

Wife liable for burning property of husband.  
R. S. 126, § 7.

Burning property insured, to injure the insurers.  
R. S. 126, § 8.

Cutting, &c., bell rope, engine, &c., within twenty-four hours of fire.  
1866, 446, § 1.

same, at time of fire, or preventing alarm or extinguishing fire.  
1866, 446, § 2.

SECTION 1. Whoever wilfully and maliciously burns the dwelling-house of another, or any building adjoining such dwelling-house, or wilfully and maliciously sets fire to any building by the burning whereof such dwelling-house is burnt, shall be punished by imprisonment in the state prison for life.

SECT. 2. Whoever wilfully and maliciously burns in the night time a meeting-house, church, court house, town house, college, academy, jail, or other building erected for public use, or a banking-house, warehouse, store, manufactory, or mill, of another, (being, with the property therein contained, of the value of one thousand dollars,) or a barn, stable, shop, or office, of another, within the curtilage of a dwelling-house, or any other building, by the burning whereof any building mentioned in this section is burnt in the night time, shall be punished by imprisonment in the state prison for life.

SECT. 3. Whoever wilfully and maliciously burns in the day time any building mentioned in the preceding section, the punishment for which if burnt in the night time would be imprisonment in the state prison for life, shall be punished by imprisonment in the state prison not exceeding ten years.

SECT. 4. Whoever wilfully and maliciously burns a banking-house, warehouse, store, manufactory, mill, barn, stable, shop, office, outhouse, or other building whatsoever, of another, other than is mentioned in section two, or a bridge, lock, dam, or flume, or a ship or vessel, of another, shall be punished by imprisonment in the state prison not exceeding ten years.

SECT. 5. Whoever wilfully and maliciously burns or otherwise destroys, or injures, a pile or parcel of wood, boards, timber, or other lumber, or any fence, bars, or gate, or a stack of grain, hay, or other vegetable product, or any vegetable product severed from the soil and not stacked, or any standing trees, grain, grass, or other standing product of the soil, or the soil itself, of another, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the jail not exceeding one year.

SECT. 6. The preceding sections severally extend to a married woman who commits either of the offences therein described, though the property burnt or set fire to belongs partly or wholly to her husband.

SECT. 7. Whoever wilfully burns a building or any goods, wares, merchandise, or other chattels, which are at the time insured against loss or damage by fire, with intent to injure the insurer, whether such person is the owner of the property burnt or not, shall be punished by imprisonment in the state prison not exceeding twenty years.

SECT. 8. Whoever, within twenty-four hours prior to the burning of a building or other property, wilfully and maliciously cuts or removes any bell rope in the vicinity of such building or property, or cuts, injures, or destroys, any engine, or hose, or other apparatus belonging to an engine, in said vicinity, shall be deemed guilty of the burning as accessory before the fact, and be punished accordingly.

SECT. 9. Whoever, during the burning of a building or other property, wilfully and maliciously cuts or removes any bell rope in the vicinity of such building or property, or otherwise prevents an alarm being given; or cuts, injures, or destroys, an engine, or hose, or other

apparatus belonging to any engine, in said vicinity, or otherwise wilfully and maliciously prevents or obstructs the extinguishing of any fire; shall be deemed guilty of the burning as accessory after the fact, and be punished by imprisonment in the state prison not exceeding seven years, or in the jail not exceeding three years, or by fine not exceeding one thousand dollars.

SECT. 10. Whoever breaks and enters a dwelling-house in the night time, with intent to commit the crime of murder, rape, robbery, larceny, or other felony, or after having entered with such intent, breaks such dwelling-house in the night time, any person being then lawfully therein, and the offender being armed with a dangerous weapon at the time of such breaking or entry, or so arming himself in such house, or making an actual assault on any person being lawfully therein, shall be punished by imprisonment in the state prison for life.

SECT. 11. Whoever breaks and enters a dwelling-house in the night time with such intent; or having entered with such intent, breaks such dwelling-house in the night time, (the offender not being armed, nor arming himself in such house with a dangerous weapon, nor making an assault upon any person then being lawfully therein,) shall be punished by imprisonment in the state prison not exceeding twenty years.

SECT. 12. Whoever breaks and enters in the night time, a building, ship, or vessel, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, shall be punished by imprisonment in the state prison not exceeding twenty years.

3 Met. 316. 6 Met. 238. 12 Met. 240. 6 Cush. 181.

SECT. 13. Whoever enters in the night time without breaking, or breaks and enters in the day time, a building, ship, or vessel, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, the owner or any other person lawfully therein being put in fear, shall be punished by imprisonment in the state prison not exceeding ten years.

SECT. 14. Whoever enters a dwelling-house in the night time, without breaking, or breaks and enters in the day time any building, ship, or vessel, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, (no person lawfully therein being put in fear,) shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, and imprisonment in the jail not exceeding two years.

SECT. 15. Whoever steals in a building, ship, or vessel, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, or by imprisonment in the jail not exceeding two years.

6 Cush. 182. 8 Gray, 450. 8 Gray, 329, 461, 469. See Ch. 116, § 14. Ch. 120, § 44.

SECT. 16. Whoever steals in a building that is on fire, or steals any property removed in consequence of an alarm caused by fire, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the jail not exceeding two years.

SECT. 17. Whoever commits larceny by stealing from the person of another shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding two years. 12 Allen, 182.

SECT. 18. Whoever commits larceny, by stealing, of the property of another, any money, goods, or chattels, or any bank note, bond, promissory note, bill of exchange, or other bill, order, or certificate, or any book of accounts for or concerning money or goods due, or to become due, or to be delivered, or any deed or writing containing a conveyance of land or any other valuable contract in force, or any receipt, release, or defeasance, or any writ, process, or public record, if the property stolen exceeds the value of one hundred dollars, shall be punished by

Burglary, being armed, or making an assault.  
R. S. 126, § 9.  
1839, 127.  
4 Met. 368.  
6 Met. 568.  
See 1871, 76.

not being armed, &c.  
R. S. 126, § 10.  
4 Met. 367.  
6 Met. 568.

Breaking in night, building, or ship, with intent, &c.  
R. S. 126, § 11.  
1851, 156, § 1.  
20 Pick. 369.  
108th. /

Entering in night, without breaking, &c., in day time, &c.  
R. S. 126, § 12.  
1851, 156, § 2.

Entering dwelling-house in night, or breaking, &c., without putting in fear.  
R. S. 126, § 13.  
1851, 156, § 3.  
See 1839, 386.  
12 Cush. 246.

Stealing in building, ship, &c.  
R. S. 126, § 16.  
1845, 28.  
1851, 156, § 4.  
2 Cush. 688.

at a fire.  
R. S. 126, § 15.  
See Ch. 116, § 14.  
Ch. 120, § 41.

Larceny from the person.  
R. S. 126, § 16.  
See Ch. 116, § 14.  
Ch. 120, § 41.  
8 Cush. 285.

of property exceeding \$100 in value.  
R. S. 126, § 17.  
R. S. 143, §§ 5, 6.  
2 Met. 419.  
9 Met. 278.  
4 Gray, 418.  
See Ch. 116, § 14.  
Ch. 120, § 41.  
8 Gray, 456.

Larceny of property not exceeding \$ 100 in value.

Larceny, destruction, &c., of wills, &c.

Allegation of value not required.  
See Ch. 92, § 17.

Larceny of property of value of \$ 5.  
R. S. 143, §§ 5, 6.  
1887, 217.  
1861, 348.

1876, 149

Second conviction, or conviction at same term of three larcenies.  
R. S. 126, § 19.  
22 Pick. 1.  
8 Met. 458.  
4 Met. 361, 364.  
11 Met. 575, 581.  
12 Met. 248.

Larceny of paper designed for bank bills, &c., with intent to pass, &c.  
1868, 67, § 1.

Printers, &c., retaining such paper, &c., with intent to pass, &c.  
1868, 67, § 2.

Larceny of things annexed to the realty.  
1861, 151, § 1.

Accessory to such larceny.  
1861, 151, § 2.

imprisonment in the state prison not exceeding five years, or by fine not exceeding six hundred dollars and imprisonment in the jail not exceeding two years; or if the property stolen does not exceed the value of one hundred dollars, shall be punished by imprisonment in the state prison or jail not exceeding one year, or by fine not exceeding three hundred dollars.

SECT. 19. Whoever steals, or for any fraudulent purpose, destroys or conceals any will, codicil, or other testamentary instrument, shall, upon conviction thereof, be punished by imprisonment in the house of correction not exceeding two years, or in the state prison not exceeding five years.

SECT. 20. In an indictment for an offence under the preceding section, no allegation of value or ownership need be made; and in the trial of such an indictment, no disclosure made by any person under section seventeen of chapter ninety-two shall be used in evidence against him.

SECT. 21. Whoever, upon a complaint before a justice of the peace or police court, is convicted of stealing money or goods, not exceeding the value of five dollars, may be committed to the house of correction or to the house of industry or workhouse within the city or town where the offence was committed, for a term not exceeding six months; or he may instead thereof be sentenced to pay a fine not exceeding twenty dollars, either with or without a condition, that if the same with the costs of prosecution is not paid within a time specified, he shall be so committed for a term designated in the sentence.

SECT. 22. Whoever, having been convicted, upon indictment, either of the crime of larceny or of being accessory to the crime of larceny before the fact, afterwards commits the crime of larceny, or is accessory thereto before the fact, and is convicted thereof upon indictment; and whoever is convicted at the same term of the court, either as principal or accessory before the fact, of three distinct larcenies; shall be deemed a common and notorious thief, and be punished by imprisonment in the state prison not exceeding twenty years, or in the jail not exceeding three years.

SECT. 23. Whoever commits the crime of larceny by stealing any printed piece of paper or blank designed for issue by any incorporated bank or banking company in the United States, as a bank bill, certificate, or promissory note, or printed by means of any engraved plate designed for printing such pieces of paper or blanks, with intent either to utter or pass the same, or to cause or allow the same to be uttered or passed as true, either with or without alteration or addition, and thereby to injure or defraud any person, shall be punished by imprisonment in the state prison for life, or any term of years.

SECT. 24. Whoever, having been employed to print, or having assisted in printing, any such printed piece of paper or blank, or having been intrusted with the care or custody thereof, retains the same in his possession without the knowledge and consent of the corporation for which the same was printed, with the intent either to utter or pass it, or to cause or allow it to be uttered or passed, as true, either with or without alteration or addition, and thereby to injure or defraud any person, shall be punished by imprisonment in the state prison for life, or any term of years.

SECT. 25. Whoever by a trespass, with intent to steal, takes and carries away any thing which is parcel of the realty or annexed thereto, the property of another of some value, against his will, shall be guilty of such simple or aggravated larceny as he would be guilty of if such property were personal property.

SECT. 26. Any person may become an accessory to such larceny before or after the fact, or a receiver of the property stolen in like man-

ner as if the property stolen were personal, and shall be punished accordingly.

SECT. 27. The same courts and justices shall have jurisdiction of offences under the preceding section, as would have jurisdiction if the property stolen were personal property.

SECT. 28. The stealing of such real property may be a larceny from one or more tenants, sole, joint, or in common, in fee, for life, or years, at will or sufferance, mortgagors or mortgagees, in possession of the same, or who may have an action of tort against the offender for trespass upon the property, but not from one having only the use or custody thereof. The larceny may be from a wife in possession, where she is authorized by law to hold such property as if sole, otherwise her occupation may be the possession of the husband. Where such property which was of a person deceased is stolen, it may be a larceny from any one or more heirs, devisees, reversioners, remainder-men, or others, having a right upon such decease to take possession but not having entered as it would be after entry. The larceny may be from a person unknown, when it would be such if the property stolen were personal.

SECT. 29. Such larceny cannot be committed by one against whom no action of tort could be maintained for acts like those constituting the larceny, but may be committed by those having only the use or custody.

SECT. 30. Whoever, without the consent of the owner and with a felonious intent, takes any beast or bird ordinarily kept in a state of confinement, and not the subject of larceny at common law, shall be deemed guilty of larceny.

SECT. 31. The officer who arrests a person charged as principal or accessory in any robbery or larceny, shall secure the property alleged to be stolen, annex a schedule thereof to his return, and be answerable for the same; and upon conviction of the offender, the stolen property shall be restored to the owner.

SECT. 32. Upon a conviction of burglary, robbery, or larceny, the court may order a meet recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses with a reasonable allowance for their time and trouble; which shall be paid by the county treasurer, and charged by him to the commonwealth.

SECT. 33. When a person arrested upon a charge of burglary, robbery, or larceny, forfeits his recognizance, or escapes from the custody of the law after being committed to jail for trial, the court before whom the case would have been tried shall have the same authority to order a recompense and allowance to the prosecutor, and to the officer who has secured and kept the property, as provided in the preceding section.

SECT. 34. Whoever makes or mends, or begins to make or mend, or knowingly has in his possession, any engine, machine, tool, or implement, adapted and designed for cutting through, forcing, or breaking open, any building, room, vault, safe, or other depository, in order to steal therefrom money or other property, or to commit any other crime, knowing the same to be adapted and designed for the purpose aforesaid, with intent to use or employ or allow the same to be used or employed for such purpose, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

SECT. 35. Whoever embezzles, or fraudulently converts to his own use, or secretes with intent to embezzle or fraudulently convert to his own use, money, goods, or property, delivered to him, which may be the subject of larceny, or any part thereof, shall be deemed guilty of simple larceny.

SECT. 36. If a clerk, or other person employed in the treasury of this

Jurisdiction.  
1851, 151, § 2.  
See Ch. 116, § 14.  
Ch. 120, § 41.

Such larceny  
may be from  
one or more  
tenants.  
1851, 151, § 4.  
1852, 312.

of property of  
person deceased.

from person  
unknown.

by whom it  
cannot be com-  
mitted.  
1851, 151, § 5.  
1852, 312.

Larceny of beasts  
and birds.  
1850, 283.

Officer making  
arrest to secure,  
&c., goods stolen.  
R. S. 126, § 25.  
21 Pick. 156.  
4 Gray, 413.  
6 Allen, 299.

Allowance to  
prosecutor and  
officer on con-  
viction.  
R. S. 126, § 26.

when prisoners  
forfeit recogni-  
zance, or escape.  
1841, 38.

Making, hold-  
ing, using, &c.,  
burglari-  
ous instruments.  
1853, 194.  
8 Gray, 375.

1876 = 202

Embezzlement  
the subject of  
larceny.  
1857, 238.  
14 Gray, 62.  
5 Allen, 502.  
27 Mass. 594.

by persons in  
state treasury.

R. S. 12, § 22.  
R. S. 126, § 23.

Embezzlement by  
town, city, or  
county officers.  
1866, 487.

by agents,  
clerks, &c.  
R. S. 126, § 29.  
2 Met. 343.  
11 Met. 64.  
3 Gray, 461.  
9 Gray, 6.  
10 Gray, 178.

116 M. 40

by officers,  
&c., of banks.  
1846, 171, § 1.  
8 Met. 247.  
1 Allen, 575.  
97 Mass. 50.  
101 Mass. 204.

Taking by accom-  
plices deemed tak-  
ing by officer,  
&c.  
1846, 171, § 3.

Embezzlement,  
&c., by carriers  
and others.  
R. S. 126, § 30.  
9 Met. 141, 142.  
3 Gray, 461.  
6 Gray, 15.  
99 Mass. 429.

Indictment and  
evidence.  
What will not be  
a variance.  
R. S. 133, § 10.  
1846, 216.  
1846, 171, § 2.  
8 Met. 247.  
100 Mass. 8.

commonwealth, commits any fraud or embezzlement therein, he shall be punished by fine not exceeding two thousand dollars, or by imprisonment in the state prison for life, or such term of years as the court shall order.

SECT. 37. If a town, city, or county officer, embezzles or fraudulently converts to his own use, or fraudulently takes or secretes with intent so to do, any effects or property belonging to or in possession of said town, city, or county, he shall be deemed guilty of larceny, and be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

SECT. 38. If an officer, agent, clerk, or servant, of any incorporated company, or if a clerk, agent, or servant, of any private person, or co-partnership, except apprentices and other persons under the age of sixteen years, embezzles, or fraudulently converts to his own use, or takes, or secretes, with intent so to do, without consent of his employer or master, any property of another, which has come to his possession or is under his care by virtue of such employment, he shall be deemed guilty of simple larceny.

SECT. 39. If an officer of an incorporated bank, or any person in the employment of such bank, fraudulently converts to his own use, or fraudulently takes and secretes with intent so to do, any bullion, money, note, bill, or other security for money, belonging to and in possession of such bank, or belonging to any person and deposited therein, he shall, whether intrusted with the custody thereof or not, be deemed guilty of larceny in said bank, and be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars, and imprisonment in the jail not exceeding two years.

SECT. 40. In prosecutions for such offences, the fraudulent taking or receiving by any person or persons of any bullion, money, note, bill, or other security for money, belonging to such bank, by reason of an unlawful confederacy or agreement of him or them with an officer of said bank, or any person in the employment thereof, with intent to defraud the same, shall be deemed to be a fraudulent taking by such officer or person in the employment of the bank, to his own use, within the meaning of the preceding section; and it shall not be necessary on the trial to identify the particular bullion, money, note, bill, or security for money, so taken or received.

SECT. 41. If a carrier or other person to whom any property which may be the subject of larceny has been delivered to be carried for hire, or if any other person intrusted with such property, embezzles, or fraudulently converts to his own use, or secretes with intent so to do, any such property, either in the mass as the same was delivered, or otherwise, and before delivery thereof at the place at which, or to the person to whom, it was to be delivered, he shall be deemed to be guilty of simple larceny.

SECT. 42. In prosecutions for the offence of embezzling, fraudulently converting to one's own use, or fraudulently taking and secreting with intent so to embezzle or convert, the bullion, money, notes, bank notes, checks, drafts, bills of exchange, obligations, or other securities for money, of any person, bank, incorporated company, or copartnership, by a cashier, or other officer, clerk, agent, or servant, of such person, bank, incorporated company, or copartnership, it shall be sufficient to allege generally in the indictment an embezzlement, fraudulent conversion, or taking with such intent, of money to a certain amount, without specifying any particulars of such embezzlement; and on the trial evidence may be given of any such embezzlement, fraudulent conversion, or taking with such intent, committed within six months next after the time stated in the indictment; and it shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance, if it is proved, that any bullion, money, notes, bank note, check,

draft, bill of exchange, or other security for money, of such person, bank, incorporated company, or copartnership, of whatever amount, was fraudulently embezzled, converted, or taken with such intent, by such cashier, or other officer, clerk, agent, or servant, within said period of six months.

SECT. 43. Whoever buys, receives, or aids in the concealment of, stolen money, goods, or property, knowing the same to have been stolen, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the jail not exceeding two years.

SECT. 44. Upon a first conviction under the preceding section, and when the act of stealing the property was a simple larceny, if the party convicted of buying, receiving, or aiding in the concealing of, such stolen property, makes satisfaction to the party injured, to the full value of the property stolen and not restored, he shall not be imprisoned in the state prison.

SECT. 45. In prosecutions for the offence of buying, receiving, or aiding in the concealment of, stolen property known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole the property has been convicted.

SECT. 46. Whoever buys, receives, or aids in the concealment of, any embezzled property, knowing the same to have been embezzled, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, or by imprisonment in the jail not exceeding two years.

SECT. 47. Whoever is convicted of buying, receiving, or aiding in the concealment of, stolen or embezzled property, knowing the same to have been stolen or embezzled, having been before convicted of the like offence, and whoever is convicted at the same term of the court of three or more distinct acts of buying, receiving, or aiding in the concealment of, money, goods, or property stolen or embezzled as aforesaid, shall be deemed and adjudged to be a common receiver of stolen or embezzled goods, and shall be punished by imprisonment in the state prison not exceeding ten years.

SECT. 48. Whoever wilfully, mischievously, and without right, takes or uses any boat or vehicle, or takes, drives, rides, or uses, any horse, ass, mule, ox, or any draught animal, the property of another, without the consent of the owner or other person having the legal custody, care, or control, of the same, shall be punished by fine not exceeding three hundred dollars, or by imprisonment in the house of correction for a term not exceeding six months: *provided*, that nothing in this section shall be so construed as to apply to any case where the taking of the property of another is with the intent to steal the same, or, when it is taken under a claim of right, or with the presumed consent of the owner or other person having the legal control, care, or custody, of the same.

SECT. 49. An officer, agent, clerk, or servant, of a corporation, or any other person, who issues, or signs with intent to issue, any certificate of stock in a corporation, or who issues, signs, or indorses, with intent to issue, any bond, note, bill, or other obligation or security, in the name of such corporation, beyond the amount authorized by law, or limited by the legal votes of such corporation or its proper officers, or negotiates, transfers, or disposes of, such certificate, with intent to defraud, shall be punished by imprisonment in the state prison not exceeding ten years, or in the house of correction not exceeding one year.

SECT. 50. An officer, agent, clerk, or servant, of a corporation, or any other person, who fraudulently issues or transfers a certificate of the stock of a corporation, to any person not entitled thereto, or fraudulently signs such certificate, in blank or otherwise, with the intent that it shall be so issued or transferred, by himself or any other person, shall

Buying, receiving, &c., stolen goods.

R. S. 126, § 20.

6 Met. 242.

5 Cush. 287.

See Ch. 116, § 14.

Ch. 120, § 41.

Effect of restitution of stolen property bought, &c.

R. S. 126, § 21.

Receiver of stolen goods tried before thief is convicted.

R. S. 126, § 24.

Buying, &c., of embezzled goods, &c.

1858, 184, § 1.

Second conviction and several offences.

Common receiver.

1858, 184, § 2.

Unlawful taking of animals, &c., but not with intent to steal, &c.

1856, 89, § 1.

See Ch. 120, § 42.

Issuing, &c., certificates of stock, bonds, &c., beyond amount authorized.

1856, 123, § 1.

1858, 114.

Fraudulently issuing or transferring certificates of stock, &c.

1856, 123, § 2.

be punished by imprisonment in the state prison not exceeding ten years, or in the house of correction not exceeding one year.

Making false entries, &c., in books of corporation.

SECT. 51. An officer, agent, clerk, or servant, of a corporation, who makes a false entry in the books thereof, with intent to defraud, and any person whose duty it is to make in such books a record or entry of the transfer of stock, or of the issuing or cancelling of certificates thereof, or of the amount of stock issued by such corporation, who omits to make a true record or entry thereof, with intent to defraud, shall be punished by imprisonment in the state prison not exceeding ten years, or in the house of correction not exceeding one year.

Books of corporation evidence. 1856, 128, § 4.

SECT. 52. On the trial of any person for an offence under the three preceding sections, the books of any corporation to which such person had access or the right of access, shall be admissible in evidence.

Falsely personating another, &c. R. S. 126, § 31. 12 Allen, 181.

SECT. 53. Whoever falsely personates or represents another, and in such assumed character receives any property intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed to have committed simple larceny.

Obtaining property by false pretences or tokens. R. S. 126, § 32. 1854, 12, § 1.

SECT. 54. Whoever designedly, by a false pretence, or by a privy or false token, and with intent to defraud, obtains from another person any property, or obtains, with such intent, the signature of any person to a written instrument, the false making whereof would be punishable as forgery, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five hundred dollars and imprisonment in the jail not more than two years; but the provisions of this section shall not apply to any purchase of property by means of a false pretence relating to the purchaser's means or ability to pay, when by the terms of the purchase, payment for the same is not to be made upon or before the delivery of the property purchased, unless such pretence is made in writing, and signed by the party to be charged.

074m. 486  
108m. 309  
113m. 64  
See Ch. 116, § 14. Ch. 120, § 41.  
See 1863, 248. 9 Gray, 125. 1 Allen, 590. 7 Allen, 548. 11 Allen, 233, 266. 104 Mass. 549. 105 Mass. 172.

Forging, &c., private labels, trade marks, &c. 1850, 90, § 1.

SECT. 55. Whoever knowingly and wilfully forges or counterfeits, or causes or procures to be forged or counterfeited, upon any goods, wares, or merchandise, the private labels, stamps, or trade marks, of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares, or merchandise, whatever, shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars.

Selling wares having forged stamps, &c. 1850, 90, § 2.

SECT. 56. Whoever vends any goods, wares, or merchandise, having thereon a forged or counterfeited stamp, label, or trade mark, of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall be punished by imprisonment not exceeding six months, or by fine not exceeding fifty dollars.

717m. 112  
Obtaining property by tricks at cards, &c. 1855, 135, § 1. See Ch. 116, § 14. Ch. 120, § 41.

SECT. 57. Whoever by the game of three-card monte, so called, or any other game, device, sleight of hand, pretensions to fortune telling, trick, or other means whatever, by the use of cards, or other implements or instruments, fraudulently obtains from another person property of any description, shall be punished as in case of larceny of property of like value.

Gross frauds, &c., at common law. R. S. 126, § 33.

SECT. 58. Whoever is convicted of any gross fraud or cheat at common law shall be punished by imprisonment in the state prison not exceeding ten years, or in the jail not exceeding two years, or by fine not exceeding four hundred dollars.

Conveying land encumbered without notice. 1856, 177, § 2. 15 Gray, 189. 8 Allen, 518, 520.

SECT. 59. Whoever conveys any real estate, knowing that any encumbrance exists thereon, without, before the consideration is paid, informing the grantee or grantees of the existence and nature of such an encumbrance, so far as he has knowledge thereof, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding one thousand dollars.

Selling land at

SECT. 60. Whoever, knowing that his land is attached on ~~name~~



process, with intent to defraud sells and conveys it without giving notice of the attachment to the person to whom he sells and conveys it, shall be punished by imprisonment in the state prison not exceeding three years, or in the jail not exceeding one year.

SECT. 61. Whoever, with a fraudulent intent to place mortgaged personal property beyond the control of the mortgagee, removes or conceals, or aids or abets in removing or concealing, the same, and any mortgagor of such property who assents to such removal or concealment, shall be punished by fine not exceeding one thousand dollars or by imprisonment in the jail not exceeding one year.

SECT. 62. If a mortgagor of personal property sells or conveys the same or any part thereof, without the written consent of the mortgagee, and without informing the person to whom he sells or conveys, that the same is mortgaged, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the jail not exceeding one year.

SECT. 63. If a hirer or lessee of personal property sells or conveys the same, or any part thereof, without the written consent of the owner or lessor, and without informing the person to whom the same is sold or conveyed, that it is so hired or leased, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the jail not exceeding one year.

SECT. 64. Whoever, holding any collateral security deposited with him for the payment of a debt which may be due him, sells, pledges, loans, or in any way disposes of, the same, before such debt becomes due and payable, and without the authority of the party depositing the same, shall be punished by fine not exceeding five hundred dollars, or imprisonment in the state prison or jail not exceeding two years.

SECT. 65. If a consignee or factor deposits or pledges any merchandise, bill of lading, certificate, or order for the delivery of merchandise, consigned or intrusted to him as security for money borrowed, or negotiable instrument received by him, and disposes of or applies the same to his own use in violation of good faith and with intent to defraud the owner thereof; or with the like fraudulent intent, applies or disposes of any money or negotiable instrument raised or acquired by the sale or other disposition of such merchandise, bill of lading, certificate, or order, to his own use; he shall be punished by fine not exceeding five thousand dollars and imprisonment not exceeding five years.

SECT. 66. Whoever wilfully and maliciously breaks down, injures, removes, or destroys, any monument erected for the purpose of designating the boundaries of a city or town, or of a tract or lot of land, or any tree marked for that purpose, or so breaks down, injures, removes, or destroys, any mile stone, mile board, or guide board, erected upon a highway or other public way, turnpike, or railroad, or wilfully or maliciously defaces or alters the inscription on any such stone or board, or wilfully or maliciously mars or defaces any building, or sign board, or extinguishes any lamp, or breaks, destroys, or removes, any lamp, or lamp post, or railing, or posts, erected on any bridge, sidewalk, street, highway, court, or passage, shall be punished by imprisonment in the jail not exceeding six months, or by fine not exceeding fifty dollars.

SECT. 67. Whoever wilfully and maliciously, or wantonly and without cause, destroys, defaces, mars, or injures, any school-house, church, or other building erected or used for the purposes of education or religious instruction, or for the general diffusion of knowledge; or any of the out-buildings, fences, wells, or appurtenances, of such school-house, church, or other building; or any furniture, apparatus, or other property, belonging to, or connected with, such school-house, church, or other building; shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the jail not exceeding one year.

SECT. 68. Whoever wilfully and maliciously, by the explosion of

tached without notice.  
R. S. 126, § 34.

Concealing mortgaged personal property, &c.  
1859, 246.

Mortgagor selling without consent of mortgagee.  
1850, 284.  
1 Allen, 498.  
8 Allen, 618.  
10 Allen, 81.  
105 Mass. 680.  
Hirer, &c., of personal property selling without consent.  
1867, 166.  
See 1836, 127.

Sale, &c., of collateral security before debt due, &c.  
1856, 213.  
See 1836, 127.  
1870, 231.  
1 Allen, 503.  
5 Allen, 331.

Consignees, &c., fraudulently depositing or pledging property, &c.  
1849, 216, § 6.

Maliciously destroying, &c., monuments, mile-stones, guide-boards; extinguishing lamps, &c.  
R. S. 25, § 28.  
R. S. 126, § 43.

Wilful injury, &c., to school-house, church, &c., or furniture, &c., and appurtenances thereof.  
1867, 222.

See 1872, 42.

to house, &c.,

112 M. 289

by exploding  
gunpowder, &c.  
1861, 129, § 1.

gunpowder or any other explosive substance, unlawfully destroys or injures any dwelling-house, office, shop, or other building, or any ship or vessel, shall be punished by imprisonment in the state prison not exceeding twenty years, or in the jail not exceeding five years, or by fine not exceeding one thousand dollars.

Throwing ex-  
plosive sub-  
stances into  
dwellings, &c.  
1861, 129, § 2.

SECT. 69. Whoever wilfully and maliciously throws into, against, or upon, or puts, places, or explodes, or causes to be exploded, in, upon, or near, any dwelling-house, office, shop, building, or vessel, any gunpowder or other explosive substance, or any bomb-shell, torpedo, or other instrument, filled, or loaded with any explosive substance, with intent unlawfully to destroy or injure such dwelling-house, office, shop, building, or vessel, or any person or property therein, shall be punished by imprisonment in the state prison not exceeding ten years, or in the jail not exceeding five years, or by fine not exceeding five hundred dollars.

oil of vitriol,  
coal tar, &c.  
1861, 129, § 3.

SECT. 70. Whoever wilfully and maliciously throws into, against, or upon, any dwelling-house, office, shop, or other building, or vessel, or puts or places therein or thereon any oil of vitriol, coal-tar, or other noxious or filthy substance, with intent unlawfully to injure, deface, or defile, such dwelling-house, office, shop, building, or vessel, or any property therein, shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding three years, or by fine not exceeding three hundred dollars.

Raising water so  
as to injure mill.  
Proviso.  
1849, 98.

SECT. 71. Whoever by erecting or maintaining a dam, either within or without the limits of this state, knowingly causes the water of a river or stream to be raised so as to flow upon or injure a mill lawfully existing in this state, and belonging to any citizen or citizens thereof, without right as against the owner or owners of such mill, shall be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding six months; but this section shall not apply to cases where the courts of this state have jurisdiction to abate a dam so raised or maintained.

Malicious injury  
to dams, reser-  
voirs, canals, &c.  
R. S. 126, § 40.  
1867, 160.

SECT. 72. Whoever wilfully and maliciously breaks down, injures, removes, or destroys, any dam, reservoir, canal, or trench, or any gate, flume, flash boards, or other appurtenances thereof, or any of the wheels, mill gear, or machinery, of a water-mill, or wilfully or wantonly, without color of right, draws off the water contained in a mill pond, reservoir, canal, or trench, or wilfully and maliciously, without color of right, obstructs the water of a mill pond, reservoir, canal, or trench, from flowing out of the same, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, and imprisonment in the jail not exceeding two years.

*Stam. m. p. 101*  
1875-101

Wilful injury,  
&c., to ice taken  
as merchandise.  
1860, 114.

SECT. 73. Whoever wilfully, maliciously, and without right or license, cuts, injures, mars, or otherwise damages or destroys, any ice, upon any waters within this state, from which ice is or may be taken as an article of merchandise, whereby the taking thereof is hindered, or the value thereof diminished for that purpose, shall be punished by fine not exceeding one hundred dollars.

to bridges,  
turnpike gates,  
&c.  
R. S. 126, § 41.

SECT. 74. Whoever wilfully and maliciously breaks down, injures, removes, or destroys, any public or toll bridge, or turnpike gate, or any lock, culvert, or embankment, of a canal, or wilfully and maliciously makes any aperture or breach in such embankment, with intent to destroy or injure the same, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the jail not exceeding two years.

Passing, &c.,  
toll-bridges,  
without paying.  
1842, 66.

SECT. 75. Whoever, not exempt from paying toll, passes, or attempts to pass, any toll-bridge lawfully established, without first paying the legal toll, and with intent to avoid paying the same, shall be liable to a fine not exceeding fifty dollars.

Wilfully de-

SECT. 76. Whoever wilfully casts away, burns, sinks, or otherwise

destroys, a ship or vessel, with intent to injure or defraud any owner of such ship or vessel, or the owner of any property laden on board the same, or an insurer of such ship, vessel, or property, or of any part thereof, shall be punished by imprisonment in the state prison for life or any term of years.

SECT. 77. Whoever lades, equips, or fits out, or assists in lading, equipping, or fitting out, a ship or vessel, with intent that the same shall be wilfully cast away, burnt, sunk, or otherwise destroyed, to injure or defraud an owner or insurer of such ship or vessel, or of any property laden on board the same, shall be punished by imprisonment in the state prison not exceeding twenty years, or fine not exceeding five thousand dollars and imprisonment in the jail not exceeding three years.

SECT. 78. If the owner of a ship or vessel, or of property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of a ship or vessel, makes out or exhibits, or causes to be made out or exhibited, a false or fraudulent invoice, bill of lading, bill of parcels, or other false estimates, of any goods or property laden, or pretended to be laden, on board such ship or vessel, with intent to injure or defraud an insurer of such ship, vessel, or property, or of any part thereof, he shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars and imprisonment in the jail not exceeding two years.

SECT. 79. If a master, other officer, or mariner, of a ship or vessel, makes, or causes to be made, or swears to, any false affidavit or protest, or if an owner or other person concerned in such ship or vessel, or in the goods or property laden on board the same, procures any such affidavit or protest to be made, or exhibits the same, with intent to injure, deceive, or defraud an insurer of such ship or vessel, or of any goods or property laden on board the same, he shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars and imprisonment in the jail not exceeding two years.

SECT. 80. Whoever wilfully and maliciously kills, maims, or disfigures, any horses, cattle, or other beasts, of another person, or wilfully and maliciously administers poison to any such beasts, or exposes any poisonous substance, with intent that the same shall be taken or swallowed by them, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year.

SECT. 81. Whoever wilfully commits a trespass, by cutting down or destroying any timber or wood, standing or growing on the land of another, or by carrying away any kind of timber or wood, cut down or lying on such land, or by digging up or carrying away any stone, ore, gravel, clay, sand, turf, or mould, from such land, or any roots, fruit, or plant, there being, or by cutting down or carrying away any sedge, grass, hay, or any kind of corn, standing, growing, or being, on such land, or by carrying away from any wharf or landing place any goods whatever in which he has no interest or property, without the license of the owner thereof, shall be punished by imprisonment in the jail not exceeding sixty days, or by fine not exceeding fifty dollars.

SECT. 82. Whoever wilfully and maliciously, or wantonly and without cause, cuts down or destroys, or by girdling, lopping, or otherwise, injures any fruit or other tree, not his own, standing or growing for shade, ornament, or other useful purpose, or maliciously or wantonly breaks any glass, in a building not his own, or maliciously breaks down, injures, mars, or defaces, any fence belonging to or enclosing lands not his own, or maliciously throws down or opens any gate, bars, or fence,

destroying vessels to defraud owner or insurer.  
R. S. 126, § 35.

Fitting out vessels with intent to destroy them, &c.  
R. S. 126, § 36.

Making false invoices, &c., of cargo to defraud insurer, &c.  
R. S. 126, § 37.

Making or procuring false protest, &c.  
R. S. 126, § 38.

Malicious killing, maiming, or poisoning, cattle, &c.  
R. S. 126, § 39.  
1 Mass. 59.  
2 Met. 21.  
8 Cush. 559.  
9 Gray, 299, 304.  
105 Mass. 480.

Wilful trespasses by cutting timber, wood, grain, &c.  
R. S. 126, § 44.  
See § 84.

See 1842, 160, 1838, 321.

Destroying fruit and ornamental trees, &c., injuring houses, fences, &c.  
R. S. 126, § 42.  
8 Greenl. 177.  
See Ch. 120, § 42.  
11 Cush. 414.  
97 Mass. 357.

and leaves the same down or open, or maliciously and injuriously severs from the freehold of another any produce thereof, or any thing attached thereto, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding one hundred dollars.

Destroying trees,  
&c., or stealing,  
&c., in gardens,  
&c.  
1855, 457, § 1.  
6 Gray, 349.  
See Ch. 120, § 42.  
See 1868, 321.

SECT. 83. Whoever wilfully and maliciously enters any orchard, nursery, garden, or cranberry meadow, and takes away, mutilates, or destroys, any tree, shrub, or vine, or steals, takes, and carries away, any fruit or flower, without the consent of the owner thereof, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the house of correction not exceeding three months.

Wilful trespasses  
by entering gar-  
dens, orchards,  
&c., with intent.  
How, when done  
on the Lord's  
day or secretly.  
R. S. 126, § 45.

SECT. 84. Whoever wilfully commits a trespass, by entering upon the garden, orchard, or other improved land, of another, without permission of the owner, and with intent to cut, take, carry away, destroy, or injure, the trees, grain, grass, hay, fruit, or vegetables, there growing or being, shall be punished by imprisonment in the jail not exceeding thirty days, or by fine not exceeding twenty dollars; and if any of the offences mentioned in this or section eighty-one are committed on the Lord's day, or in disguise, or secretly in the night time, the imprisonment shall not be less than five days, nor the fine, less than five dollars.

See 1869, 89,  
1869, 321.

1876 c. 181

Other malicious  
injuries to per-  
sonal property.  
R. S. 128, § 89.  
1846, 52, § 1.  
6 Gray, 349.  
See Ch. 120, § 42.  
7 Allen, 577.

SECT. 85. Whoever wilfully and maliciously destroys or injures the personal property of another in any manner or by any means not particularly described or mentioned in this chapter, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year: *provided*, that when the value of the property so destroyed or injured is not alleged to exceed the sum of fifteen dollars, the punishment shall be by fine not exceeding fifteen dollars, or imprisonment in the jail not exceeding thirty days.

107 Ma 218

108 M. 304

Persons wilfully  
injuring trees  
or committing  
mischief on  
Lord's day may  
be arrested, &c.  
1851, 245.  
1852, 245.

SECT. 86. Whoever is discovered in the act of wilfully injuring any fruit or forest trees, or committing any kind of malicious mischief on the Lord's day, may be arrested by any sheriff, deputy-sheriff, constable, watchman, police officer, or other person, and lawfully detained by imprisonment in the jail or otherwise, until a complaint can be made against him for the offence for which he was arrested, and he be taken upon a warrant issued upon such complaint; but such detention without warrant shall not continue more than twenty-four hours.

Killing pigeons  
on, or frighten-  
ing from, beds.  
1849, 29, § 1.

SECT. 87. Whoever wilfully commits any trespass by killing pigeons on, or frightening them from, beds made for the purpose of taking them in nets, by firing guns, or in any other manner, within one hundred rods of the same, except on lands lawfully occupied by himself, shall be punished by imprisonment in the jail not exceeding thirty days, or by fine not exceeding twenty dollars; and shall also be liable for the actual damages to the owner or occupant of such beds.

Injury or re-  
moval, &c., to  
property of Hu-  
mane Society.  
1854, 353.

SECT. 88. Whoever unlawfully enters any house or hut, the property of the Humane Society, and wilfully injures, destroys, removes, or carries away any food, fuel, oil, candles, furniture, utensils, or other property, belonging to said society, or unlawfully or wilfully enters any boat-house of said society, and carries away, removes, or injures, any life-boat, car, or any of the ropes, tackle, oars, or any appurtenance thereof, or wilfully injures or destroys, or unlawfully uses or commits any trespass upon the property of said society, intended or kept for the purpose of saving or preserving human life, or commits any trespass upon such hut or boat-house, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the jail not exceeding ninety days; but the penalties of this section shall not apply to persons for whose use said boats, houses, and other property, are intended and kept. Pilots, commissioners of wrecks, sheriffs, and their deputies, and constables, shall make complaint against all persons guilty of any offence under this section.

SECT. 89. Whoever sets fire to any coal-pit or pile of wood for the purpose of charring the same, on any woodland in either of the towns of New Bedford, Dartmouth, Fall River, Freetown, and Fairhaven, in the county of Bristol, and Middleborough and Rochester in the county of Plymouth, between the first day of April and the first day of October annually, shall forfeit one hundred dollars for each offence.

Setting fire to coal-pits, on woodland, in New Bedford, &c., between March and October. 1839, 148, § 1.

*Beaches 1873. 206*

SECT. 90. Whoever between the times aforesaid sets fire to any brushwood or bushes on any part of such woodland, or any land adjoining thereto, so as to cause the burning thereof, shall forfeit fifty dollars for each offence.

Burning brushwood, &c. 1839, 148, § 2.

SECT. 91. All forfeitures under the two preceding sections may be recovered, one half to the use of the town in which the offence is committed, and the other half to the use of whoever sues therefor.

How penalties recovered, and to whose use. 1839, 148, § 3.

## CHAPTER 162.

### OF FORGERY AND OFFENCES AGAINST THE CURRENCY.

#### SECTION

1. Forgery of records, contracts, &c.
2. Uttering forged records or contracts.
3. Forging notes of state treasurer, &c.
4. bank bills or notes.
5. Having in possession ten or more counterfeit bills, with intent, &c.
6. Passing counterfeit bills or forged notes.
7. Second conviction, and three convictions at same term.
8. Having counterfeit bills with intent, &c.
9. Making or having tools, &c., for counterfeiting, with intent, &c.
10. Testimony of president, &c., of banks, dispensed with in certain cases.
11. Sworn certificates of certain officers made evidence.
12. Affixing fictitious signatures.
13. Intent to defraud; statement and proof.
14. Counterfeiting coin, or having ten counterfeit pieces, &c.
15. Having less than ten pieces, with intent, &c. Uttering counterfeit coin.

#### SECTION

16. Second conviction, and three convictions at same term.
17. Making, mending, or having, tools for coining with intent, &c.
18. Issuing or passing notes as currency, &c., except, &c.
19. small notes, &c., as currency.
20. Circulation of fractional bills.
21. Fraudulently connecting parts of several bank notes, &c.
22. Wilful and malicious injury to bank bills.
23. gathering up, &c., bills of bank for purposes of injuring business, &c. Penalty.
24. Having in possession uncurrent and worthless bills, &c.
25. Uttering or passing such bills, &c.
26. Engraving, &c., shop bills resembling bank bills.
27. Sheriff, &c., to seize counterfeit bills, &c.
28. Remuneration to prosecutors, &c., of forgers, &c.

SECTION 1. Whoever falsely makes, alters, forges, or counterfeits, a public record, or a certificate, return, or attestation, of any clerk or register of a court, public register, notary public, justice of the peace, town clerk, or any other public officer, in relation to a matter wherein such certificate, return, or attestation, may be received as legal proof; or a charter, deed, will, testament, bond, or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange, or promissory note; or an order, acquittance, or discharge, for money or other property; or an acceptance of a bill of exchange, or indorsement or assignment of a bill of exchange or promissory note for the payment of money; or an accountable receipt, for money, goods, or other property; with intent to injure or defraud any person, shall be punished by imprisonment in the state prison not exceeding ten years, or in the jail not exceeding two years.

Forgery of records, contracts, &c. R. S. 127, § 1. 1858, 98. 2 Mass. 397. 1874. 10 10 Mass. 181. 15 Mass. 526. 17 Mass. 46. 3 Cush. 150. 8 Gray, 441. 448. 2 Allen, 161. 101 Mass. 32.

SECT. 2. Whoever utters and publishes as true a false, forged, or altered record, deed, instrument, or other writing, mentioned in the preceding section, knowing the same to be false, altered, forged, or counterfeit, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison not exceeding ten years, or in the jail not exceeding two years.

Uttering forged records or contracts. R. S. 127, § 2. 9 Gray, 128. 10 Gray, 477, 483. 11 Gray, 375. 14 Gray, 59. 2 Allen, 165.

Forging notes  
of state treas-  
urer, &c.  
R. S. 127, § 3.  
See § 28.

bank bills or  
notes.  
R. S. 127, § 4.  
See § 28.  
11 Gray, 306.  
2 Allen, 166.

Having in pos-  
session ten or  
more counterfeit  
bills, with intent,  
&c.  
R. S. 127, § 5.  
2 Mass. 188.  
8 Mass. 59.  
4 Pick. 238.  
97 Mass. 51, 571.

Passing counter-  
feit bills or  
forged notes.  
R. S. 127, § 6.  
11 Mass. 186.  
11 Gray, 306.  
4 Allen, 306.

Second convic-  
tion, and three  
convictions at  
same term.  
R. S. 127, § 7.

Having counter-  
feit bills, with  
intent, &c.  
R. S. 127, § 8.  
Act of amend.  
§ 15.  
10 Gray, 472.  
10 Allen, 184.

Making or having  
tools, &c., for  
counterfeiting,  
with intent, &c.  
R. S. 127, § 9.  
Act of amend.  
§ 16.

SECT. 3. Whoever falsely makes, alters, forges, or counterfeits, a note, certificate, or other bill of credit, issued by the treasurer of this commonwealth, or by any commissioner or other officer authorized to issue the same for a debt of this commonwealth, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison for life, or for any term of years.

SECT. 4. Whoever falsely makes, alters, forges, or counterfeits, a bank bill or promissory note, payable to the bearer thereof or to the order of any person, issued by an incorporated banking company established in this state, or within the United States, or any foreign province, state, or government, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison for life, or for any term of years.

SECT. 5. Whoever has in his possession at the same time ten or more similar, false, altered, forged, or counterfeit notes, bills of credit, bank bills or notes, such as are mentioned in any of the preceding sections, payable to the bearer thereof, or to the order of any person, knowing the same to be false, altered, forged, or counterfeit, with intent to utter or pass the same as true, and thereby to injure or defraud any person, shall be punished by imprisonment in the state prison for life, or for any term of years.

SECT. 6. Whoever utters or passes, or tenders in payment as true, any such false, altered, forged, or counterfeit note, certificate, or bill of credit for any debt of this commonwealth, or any bank bill, or promissory note, payable to the bearer thereof or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged, or counterfeit, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year.

SECT. 7. Whoever, having been convicted of the offence mentioned in the preceding section, is again convicted of the like offence committed after the former conviction, and whoever is, at the same term of the court, convicted upon three distinct charges of such offence, shall be deemed a common utterer of counterfeit bills, and be punished by imprisonment in the state prison not exceeding ten years.

SECT. 8. Whoever brings into this state, or has in his possession, a false, forged, or counterfeit bill or note, in the similitude of the bills or notes, payable to the bearer thereof or to the order of any person, issued by or for any bank or banking company, established in this state, or within the United States, or in any foreign province, state, or government, with intent to utter or pass the same, or to render the same current as true, knowing the same to be false, forged, or counterfeit, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year.

SECT. 9. Whoever engraves, makes, or mends, or begins to engrave, make, or mend, any plate, block, press, or other tool, instrument, or implement, or makes or provides any paper or other material, adapted and designed for the forging or making a false and counterfeit note, certificate, or other bill of credit, purporting to be issued by lawful authority for a debt of this commonwealth, or a false and counterfeit note or bill in the similitude of the notes or bills issued by any bank or banking company established in this state, or within the United States, or in any foreign province, state, or government, and whoever has in his possession any such plate or block engraved in any part, or any press, or other tool, instrument, or implement, or any paper or other material, adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used, in forging or making any such false and coun-

terfeit certificates, bills, or notes, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

SECT. 10. In prosecutions for forging or counterfeiting notes or bills of the banks before mentioned, or for uttering, publishing, or tendering in payment, as true, any forged or counterfeit bank bills or notes, or for being possessed thereof with intent to utter and pass the same as true, the testimony of the president and cashier of such banks may be dispensed with, if their place of residence is out of this state, or more than forty miles from the place of trial; and the testimony of any person acquainted with the signature of such president or cashier, or who has knowledge of the difference in the appearance of the true and the counterfeit bills or notes of such banks, may be admitted to prove that such bills or notes are counterfeit.

Testimony of president, &c., of banks, dispensed with, in certain cases.  
R. S. 127, § 10.  
2 Pick. 47.  
5 Cush. 609.

SECT. 11. In prosecutions for forging or counterfeiting any note, certificate, bill of credit, or other security, issued on behalf of the United States, or on behalf of any state or territory, or for uttering, publishing, or tendering in payment, as true, any such forged or counterfeit note, certificate, bill of credit, or security, or for being possessed thereof with intent to utter and pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any state or territory, on whose behalf such note, certificate, bill of credit, or security, purports to have been issued, shall be admitted as evidence, for the purpose of proving the same to be forged or counterfeit.

Sworn certificates of certain officers made evidence. Decl. of rights, art. 12.  
R. S. 127, § 11.

SECT. 12. If a fictitious or pretended signature, purporting to be the signature of an officer or agent of a corporation, is fraudulently affixed to any instrument or writing, purporting to be a note, draft, or other evidence of debt issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, or ever have existed.

Affixing fictitious signatures.  
R. S. 127, § 13.  
2 Mass. 77.

SECT. 13. Where an intent to defraud is required to constitute the offence of forgery, or any other offence, it shall be sufficient to allege in the indictment an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial it shall be sufficient, and shall not be deemed a variance, if there appears to be an intent to defraud the United States, or any state, county, city, town, or parish, or any body corporate, or any public officer in his official capacity, or any copartnership or members thereof, or any particular person.

Intent to defraud; statement and proof.  
R. S. 127, § 14.  
12 Met. 448.  
100 Mass. 17.

SECT. 14. Whoever counterfeits any gold or silver coin current by law or usage within this state, or has in his possession at the same time ten or more pieces of false money, or coin counterfeited in the similitude of any gold or silver coin current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, shall be punished by imprisonment in the state prison for life, or for any term of years.

Counterfeiting coin, or having ten counterfeit pieces, &c.  
R. S. 127, § 15.  
8 Mass. 59.  
21 Pick. 523.  
8 Met. 315.  
10 Met. 256.  
13 Met. 515.

1 Gray, 586. See § 28.

SECT. 15. Whoever has in his possession any number of pieces, less than ten, of the counterfeit coin mentioned in the preceding section, knowing the same to be counterfeit, with intent to utter or pass the same as true, or utters, passes, or tenders in payment, as true, any such counterfeit coin, knowing the same to be false and counterfeit, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

Having less than ten pieces, with intent, &c. Uttering counterfeit coin.  
R. S. 127, § 16.  
21 Pick. 523.  
10 Met. 256.  
13 Met. 515.  
1 Gray, 586.  
See § 28.

SECT. 16. Whoever, having been convicted of either of the offences mentioned in the preceding section, is again convicted of either of the same offences, committed after the former conviction, and whoever is at

Second conviction, and three convictions at same term.

R. S. 127, § 17.  
13 Met. 514.

the same term of the court convicted upon three distinct charges of said offences, shall be deemed a common utterer of counterfeit coin, and punished by imprisonment in the state prison not exceeding twenty years.

Making, mending, or having tools for coining, with intent, &c.  
R. S. 127, § 18.  
6 Met. 221.  
See § 23.

SECT. 17. Whoever casts, stamps, engraves, makes, or mends, or knowingly has in his possession, any mould, pattern, die, puncheon, engine, press, or other tool or instrument, adapted and designed for coining, or making counterfeit coin, in the similitude of any gold or silver coin current by law or usage in this state, with intent to use or employ the same, or to cause or permit the same to be used or employed in coining or making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

Issuing or passing notes as currency, &c., except, &c.  
R. S. 38, § 70.

SECT. 18. Whoever issues or passes any note, bill, order, or check, other than foreign bills of exchange, the notes or bills of some bank incorporated by the laws of this state, or by the laws of the United States, or of some one of the United States, or by the laws of either of the British Provinces of North America, with the intent that the same shall be circulated as currency, shall forfeit fifty dollars for each offence.

small notes, &c., as currency except, &c.  
R. S. 38, § 7.

SECT. 19. Whoever issues or passes any note, bill, order, or check, other than the notes or bills of a bank incorporated under the authority of this state or some one of the United States, for a sum less than five dollars, or whereon a less sum than five dollars is due at the time of such issuing or passing thereof, with intent that the same shall be circulated as currency, shall forfeit fifty dollars for each offence.

Circulation of fractional bills.  
1863, 392, § 2.

SECT. 20. Whoever receives or puts in circulation as currency a bank note or bill which is, or a part of which is, for any fractional part of a dollar, shall be punished by fine of twenty-five dollars.

Fraudulently connecting parts of several bank notes, &c.  
R. S. 127, § 12.  
10 Mass. 84.

SECT. 21. Whoever fraudulently connects together different parts of several bank notes, or other genuine instruments, in such a manner as to produce one additional note or instrument, with intent to pass all of them as genuine, shall be deemed guilty of forgery in like manner as if each of them had been falsely made or forged.

Willful and malicious injury to bank bills.  
1862, 64.

SECT. 22. Whoever wilfully and maliciously tears, cuts, or in any manner damages and impairs the usefulness for circulation of any bank bill or note of a bank in this state, shall be punished by fine not exceeding ten dollars for each offence; but the possession or uttering of a bill so injured shall not be evidence against a party charged, unless connected with other circumstances tending to prove that the bill or note was injured by him.

gathering up, &c., bills of bank for purpose of injuring business, &c.  
Penalty.  
1860, 116, §§ 3, 4.

SECT. 23. Whoever maliciously gathers up or retains, or maliciously aids in gathering up or retaining, any bills or notes of any bank or banking company, current by law or usage in this state, for the purpose of injuring or impeding the circulation or business of such bank or banking company, or of compelling it to do any act out of the usual course of its business, shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the jail not exceeding two years; and in the prosecution of any such offence it shall not be necessary to set out and describe each bill, but it shall be sufficient to aver and prove any amount of the bills of any bank which have been so gathered up or retained.

Having in possession uncurrent and worthless bills, &c.  
1867, 231, § 1.  
See § 27.

SECT. 24. Whoever has in his possession at the same time five or more uncurrent bank bills or notes, which are worthless as bank bills or notes, knowing the same to be worthless as aforesaid, or has papers not bank bills or notes, but made in the similitude of bank bills or notes, or papers purporting to be the bills or notes of any bank which has never existed, knowing the character of such papers, with intent to pass, utter, or circulate, the same, or to procure any other person so to do, for the purpose of injuring or defrauding, shall be punished, by imprison-



ment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the house of correction not exceeding three years.

SECT. 25. Whoever utters or passes, or tenders in payment as true, any such uncurrent and worthless bank bill or note, or any paper not a bank bill or note, but made in the similitude of a bank bill or note, or any paper purporting to be the bill or note of any bank which has never existed, knowing the same to be worthless and uncurrent, as aforesaid, with intent to injure and defraud, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars and imprisonment in the house of correction not exceeding three years.

Uttering or passing such bills, &c.  
1857, 231, § 2.  
See §§ 27, 28.  
7 Allen, 587.

SECT. 26. Whoever engraves, prints, issues, utters, or circulates, a shop bill or advertisement, in similitude, form, and appearance, like a bank bill, on paper similar to paper used for bank bills, and with vignettes, figures, or decorations, used on bank bills, or having the general appearance of a bank bill, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the jail not exceeding ninety days.

Engraving, &c., shop bills, resembling bank bills.  
1849, 5.  
See 1862, 63.

SECT. 27. When false, forged, or counterfeit bank bills, or notes, or plates, dies, or other tools, instruments, or implements, used by counterfeiters, or designed for the forging or making of false or counterfeit notes, coin, or bills, or worthless and uncurrent bank bills or notes described in sections twenty-four and twenty-five, come to the knowledge of any sheriff, constable, police officer, or other officer of justice, in this state, such officer shall immediately seize and take possession of and deliver the same into the custody of the court of record having jurisdiction of the offence of counterfeiting in the county, and the court shall, as soon as the ends of justice will permit, cause the same to be destroyed by an officer of the court, who shall make return to the court of his doings in the premises.

Sheriff, &c., to seize counterfeit bills, &c.  
1855, 188, § 1.  
1857, 231, § 3.

1875-40

SECT. 28. Upon a conviction of any offence mentioned in sections three, four, fourteen, fifteen, seventeen, or twenty-five, and also upon forfeiture by persons prosecuted for any such offence of any recognizance for their appearance, to answer to the same, the court before which the conviction is had, or where the record of the recognizance may be, may order a meet recompense to the prosecutor and to the officer who has secured and kept the evidence of the offence, not exceeding their actual expenses with a reasonable allowance for their time and trouble, to be paid by the county treasurer, and charged by him to the commonwealth; but where recognizances are so forfeited, the amount paid in any case shall not exceed the amount received by the commonwealth thereon.

Remuneration to prosecutors, &c., of forgers, &c.  
1846, 142, § 1.

## CHAPTER 163.

### OF OFFENCES AGAINST PUBLIC JUSTICE.

#### SECTION

1. Perjury;
2. what shall be deemed;
3. subornation of;
4. inciting to commit;
5. on presumption of, by witness, court may commit, &c.
6. Papers, &c., may be secured.
7. Giving or offering bribes to officers.
8. Acceptance of bribes by officers.

#### SECTION

9. Corrupting jurors, arbitrators, &c.
10. Acceptance of bribes by jurors, arbitrators, &c.
11. Attempts to aid escapes from prison, and rescuing prisoners.
12. Aiding in an escape from an officer.
13. Voluntary escape from prison.
14. Negligent escape; refusing to receive prisoner.

## SECTION

15. Refusing to arrest, and suffering escape;
16. to aid officers;
17. upon order of a justice of the peace.
18. Falsely assuming to be a justice of the peace or officer.

## SECTION

19. Disguising, to resist execution of the law.
20. Concealing and compounding offences.
21. Officers taking rewards for omitting their duty.
22. Extortion, by taking unlawful fees.

Perjury;  
R. S. 128, § 1.  
12 Mass. 274.  
See 1860, 186, § 1.  
15 Gray, 439.  
5 Allen, 459.

what shall be  
deemed;  
R. S. 94, § 12.  
R. S. 128, § 2.

subornation  
of;  
R. S. 128, § 3.  
See 1860, 186, § 2.  
11 Allen, 243.

inciting to  
commit;  
R. S. 128, § 4.

on presumption  
of, by wit-  
ness, court may  
commit, &c.  
R. S. 128, § 6.

Papers, &c., may  
be secured.  
R. S. 128, § 7.

Giving or offering  
bribes to officers.  
R. S. 128, § 8.  
See 1872, 282.

Acceptance of  
bribes by officers.  
R. S. 128, § 9.  
See 1872, 282.

SECTION 1. Whoever, being lawfully required to depose the truth in any proceeding in a course of justice, commits perjury, shall be punished, if the perjury is committed on the trial of an indictment for a capital crime, by imprisonment in the state prison for life, or any term of years, and if committed in any other case, by imprisonment in the state prison not exceeding twenty years.

SECT. 2. Whoever, being required by law to take an oath or affirmation, wilfully swears or affirms falsely, in regard to any matter or thing respecting which such oath or affirmation is required, shall be deemed guilty of perjury.

SECT. 3. Whoever is guilty of subornation of perjury, by procuring another person to commit perjury, shall be punished in the same manner as for perjury.

SECT. 4. Whoever endeavors to incite or procure any other person to commit perjury, though no perjury is committed, shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding one year.

SECT. 5. When it appears to a court of record, that a witness or party who has been legally sworn and examined, or has made an affidavit, in any proceeding in a course of justice, has so testified as to induce a reasonable presumption that he is guilty of perjury therein, the court may immediately commit such witness or party by an order or process for that purpose, or may take a recognizance with sureties for his appearing to answer to an indictment for perjury; and thereupon the witnesses to establish such perjury may if present be bound over to the proper court, and notice of the proceedings shall forthwith be given to the district-attorney.

SECT. 6. If in any proceeding in a court of justice, in which perjury is reasonably presumed as aforesaid, papers, books, or documents have been produced, which are deemed necessary to be used on a prosecution for such perjury, the court may by order detain the same from the person producing them, so long as may be necessary for their use in such prosecution.

SECT. 7. Whoever corruptly gives, offers, or promises, to any executive, legislative, or judicial officer, after his election or appointment, either before or after he is qualified, or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision, or judgment, on any matter, question, cause, or proceeding, which may be then pending, or may by law come or be brought before him in his official capacity, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding three thousand dollars and imprisonment in the jail not exceeding one year.

SECT. 8. Every executive, legislative, or judicial officer who corruptly accepts a gift or gratuity, or a promise to make a gift, or to do an act beneficial, to such officer, under an agreement, or with an understanding, that his vote, opinion, or judgment, shall be given in any particular manner, or upon a particular side of any question, cause, or proceeding, which is or may be by law brought before him in his official capacity, or that, in such capacity, he shall make any particular nomination or appointment, shall forfeit his office, be forever disqualified to hold any public office, trust, or appointment, under the constitution or laws of this state, and be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding five thousand dollars and imprisonment in the jail not exceeding two years.

SECT. 9. Whoever corrupts, or attempts to corrupt, any master in chancery, auditor, juror, arbitrator, umpire, or referee, by giving, offering, or promising, any gift or gratuity whatever, with intent to bias the opinion or influence the decision of such master in chancery, auditor, juror, arbitrator, umpire, or referee, in relation to any cause or matter pending in the court, or before an inquest, or for the decision of which, such arbitrator, umpire, or referee, has been chosen or appointed, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year.

Corrupting jurors, arbitrators, &c.  
R. S. 128, § 10.

SECT. 10. If any person summoned as a juror, or chosen or appointed as an arbitrator, umpire, or referee, or if any master in chancery, or auditor, corruptly takes any thing to give his verdict, award, or report, or corruptly receives any gift or gratuity whatever, from a party to a suit, cause, or proceeding, for the trial or decision of which such juror has been summoned, or for the hearing or determination of which such master in chancery, auditor, arbitrator, umpire, or referee, has been chosen or appointed, he shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding one year.

Acceptance of bribes by jurors, arbitrators, &c.  
R. S. 128, § 11.

SECT. 11. Whoever conveys into a jail, house of correction, house of reformation, or other like place of confinement, any disguise, instrument, tool, weapon, or other thing, adapted or useful to aid a prisoner in making his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained; or by any means whatever aids or assists such prisoner in his endeavor to escape therefrom, whether such escape is effected or attempted or not; and whoever forcibly rescues any prisoner held in custody upon any conviction or charge of an offence; shall be punished by imprisonment in the state prison not exceeding seven years; or if the person whose escape or rescue was effected or intended was charged with an offence not capital nor punishable by imprisonment in the state prison, then by imprisonment in the jail not exceeding two years, or by fine not exceeding five hundred dollars.

Attempts to aid escapes from prison, and rescuing prisoners.  
R. S. 128, § 12.

SECT. 12. Whoever aids or assists a prisoner in escaping, or attempting to escape, from an officer or person who has the lawful custody of such prisoner, shall be punished by imprisonment in the jail not exceeding two years, or by fine not exceeding five hundred dollars.

Aiding in an escape from an officer  
R. S. 128, § 13.

SECT. 13. If a jailer or other officer voluntarily suffers a prisoner in his custody upon conviction or any criminal charge, to escape, he shall suffer the like punishment and penalties as the prisoner suffered to escape was sentenced to, or would be liable to suffer upon conviction of the crime or offence wherewith he stood charged.

Voluntary escape from prison.  
R. S. 128, § 14.

SECT. 14. If a jailer or other officer through negligence suffers a prisoner in his custody upon conviction or any criminal charge, to escape, or wilfully refuses to receive into his custody a prisoner lawfully directed to be committed thereto on a criminal charge or conviction, or any lawful process whatever, he shall be punished by imprisonment in the jail not exceeding two years, or by fine not exceeding five hundred dollars.

Negligent escape; and refusing to receive a prisoner.  
R. S. 128, § 15.

SECT. 15. If an officer authorized to serve process, wilfully and corruptly refuses to execute any lawful process to him directed, and requiring him to apprehend or confine any person convicted or charged with an offence, or wilfully and corruptly omits or delays to execute such process, whereby such person escapes and goes at large, he shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding five hundred dollars.

Refusing to arrest, and suffering escape.  
R. S. 128, § 16.

SECT. 16. Whoever being required in the name of the commonwealth, by a sheriff, deputy-sheriff, coroner, constable, police officer, or watchman, neglects or refuses to assist him in the execution of his office in a criminal case, or in the preservation of the peace, or the appre-

to aid officers.  
R. S. 128, § 17.  
1865, 45, § 1.

bending or securing of any person for a breach of the peace, or in a case of escape or rescue of persons arrested upon civil process, shall be punished by imprisonment in the jail not exceeding one month, or by fine not exceeding fifty dollars.

Refusing to arrest upon order of a justice of the peace.  
R. S. 128, § 18.

SECT. 17. Whoever being required by a justice of the peace, upon view of a breach of the peace or any other offence proper for his cognizance, to apprehend and bring before him the offender, refuses or neglects to obey such justice, shall be punished in the manner provided in the preceding section for refusing assistance to a sheriff; and no person, to whom such justice is known or declares himself to be a justice of the peace, shall plead any excuse on pretence of ignorance of his office.

Falsely assuming to be a justice of the peace or officer.  
R. S. 128, § 19.  
10 Cush. 61.

SECT. 18. Whoever falsely assumes or pretends to be a justice of the peace, sheriff, deputy-sheriff, coroner, constable, police officer, or watchman, and takes upon himself to act as such, or to require any person to aid or assist him in a matter pertaining to the duty of any such officer, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding four hundred dollars.

See 1866, 281, § 2.  
1866, 261, § 6.

Disguising to resist execution of the law.  
R. S. 128, § 20.

SECT. 19. Whoever in any manner disguises himself, with intent to obstruct the due execution of the law, or with intent to intimidate, hinder, or interrupt, any officer or other person in the legal performance of his duty, or the exercise of his rights under the constitution or laws of this state, whether such intent is effected or not, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding five hundred dollars, and may also be bound to good behavior for the term of one year after the expiration of such imprisonment.

Concealing and compounding offences.  
R. S. 128, § 21.  
16 Mass. 91.  
4 Allen, 684.  
12 Allen, 667.

SECT. 20. Whoever, having knowledge of the commission of an offence punishable with death or by imprisonment in the state prison, takes money, or a gratuity or reward, or an engagement therefor, upon an agreement or understanding express or implied to compound or conceal such offence, or not to prosecute therefor, or not to give evidence thereof, shall, where such offence of which he has knowledge is punishable with death or imprisonment in the state prison for life, be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding one year; and where the offence of which he so had knowledge was punishable in any other manner, he shall be punished by imprisonment in the jail not exceeding two years, or by fine not exceeding five hundred dollars.

Officers, taking rewards for omitting their duty.  
R. S. 128, § 22.

SECT. 21. If a sheriff, constable, or other officer authorized to serve legal process, receives from a defendant, or any other person, any money or other valuable thing, as a consideration, reward, or inducement, for omitting or delaying to arrest a defendant, or to carry him before a magistrate, or for delaying to take a person to prison, or for postponing the sale of property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall be punished by fine not exceeding three hundred dollars, or by imprisonment in the jail not exceeding three months.

Extortion by taking illegal fees.  
R. S. 128, § 23.  
1862, 312.  
1855, 311, § 2.  
1 Mass. 227.  
15 Mass. 525.  
17 Mass. 410.  
7 Pick. 171.  
1 Pick. 279.

SECT. 22. A recording officer who wilfully and corruptly demands and receives any greater fee for an official duty or service than is allowed by law, shall forfeit fifty dollars for each offence; and any other person who wilfully and corruptly demands and receives for the performance of any official duty or service for which a fee or compensation is allowed and provided by law, a greater fee or compensation than is so allowed and provided, shall forfeit thirty dollars for each offence; which penalties may be recovered by complaint or indictment to the use of the commonwealth, or by action of tort to the use of any person who sues therefor: *provided*, that the prosecution or action is commenced within one year after the offence is committed.

*Disturbance of Peace  
amounting to insurrection -*  
1876, c 174

## CHAPTER 164.

### OF OFFENCES AGAINST THE PUBLIC PEACE.

**SECTION**

1. Unlawful assemblies, how suppressed.
2. Refusing assistance, when required; or to disperse, when commanded.
3. Neglect of mayor or other officer to suppress, &c.
4. Officers may quell unlawful assemblies, by force, &c.
5. Armed force, if called out, to obey orders of governor, judge, &c.
6. Officers, &c., to be held guiltless, though death is caused. Rioters, &c., responsible.

**SECTION**

7. Riotously destroying dwelling-house, &c.
8. Towns, &c., to pay three-fourths of value of property destroyed or injured;
9. may recover from offenders.
10. Carrying slung shot.
11. Manufacturing, &c., slung shot.
12. Making bonfire within ten rods of a building.
13. False alarm of fire.

**SECTION 1.** If any persons, to the number of twelve or more, being armed with clubs or other dangerous weapons, or if any persons, to the number of thirty or more, whether armed or not, are unlawfully, riotously, or tumultuously assembled in any city or town, it shall be the duty of the mayor and of each of the aldermen of such city, and of each of the selectmen of such town, and of every justice of the peace living in any such city or town, and also of the sheriff of the county and his deputies, to go among the persons so assembled, or as near to them as may be with safety, and in the name of the commonwealth to command all the persons so assembled, immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, it shall be the duty of each of said magistrates and officers to command the assistance of all persons there present, in seizing, arresting, and securing, such persons in custody, so that they may be proceeded with for their offence, according to law.

Unlawful assemblies, how suppressed.  
R. S. 129, § 1.  
10 Mass. 518.

**SECT. 2.** If any person present, being commanded by any of the magistrates or officers mentioned in the preceding section to aid or assist in seizing and securing such rioters, or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such magistrate or officer to depart from the place, refuses or neglects so to do, he shall be deemed one of the rioters, or persons unlawfully assembled, and may be prosecuted and punished accordingly.

Refusing assistance when required; or to disperse when commanded.  
R. S. 129, § 2.

**SECT. 3.** If any mayor, alderman, selectman, justice of the peace, sheriff, or deputy-sheriff, having notice of any such riotous or tumultuous and unlawful assembly, in the city or town in which he lives, neglects or refuses immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or omits or neglects to exercise the authority with which he is invested by this chapter for suppressing such assembly, and for arresting and securing the offenders, he shall be punished by fine not exceeding three hundred dollars.

Neglect of mayor or other officer to suppress, &c.  
R. S. 129, § 3.

**SECT. 4.** If any persons who are so riotously or unlawfully assembled, and who have been commanded to disperse, as before provided, refuse or neglect to disperse without unnecessary delay, any two of the magistrates or officers before mentioned may require the aid of a sufficient number of persons, in arms or otherwise as may be necessary, and shall proceed in such manner as in their judgment is expedient, forthwith to disperse and suppress such assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Officers may quell unlawful assemblies by force, &c.  
R. S. 129, § 4.  
96 Mass. 444.

**SECT. 5.** When any armed force called out in the manner provided by chapter thirteen, to suppress a tumult or riot, or to disperse any body of men acting together by force and with intent to commit a felony, or

Armed force, if called out, to obey orders of governor, judge, &c.

R. S. 129, § 5.  
See Ch. 13, § 134.  
Ch. 144, §§ 64,  
66.

Officers, &c., to  
be held guilt-  
less, though  
death is caused.  
Rioters, &c., re-  
sponsible.  
R. S. 129, § 6.  
1830, 64, § 1.  
7 Allen, 541.

Riotously de-  
stroying dwell-  
ing-house, &c.  
R. S. 129, § 7.  
1862, 312.

Towns, &c., to  
pay three-  
fourths of value  
of property de-  
stroyed or in-  
jured;  
1839, 64, § 2.  
1862, 312.

may recover  
from offenders.  
1839, 64, § 3.

Carrying slung  
shot, &c.  
1850, 194, § 1.  
1852, 296, § 1.  
1850, 199.  
7 Allen, 588.  
103 Mass. 443.

Manufacturing,  
&c., slung shot,  
&c.  
1850, 194, § 2.

Making bonfire  
within ten rods  
of a building.  
1837, 177, § 1.

False alarm of  
fire.  
1837, 177, § 2.

to offer violence to persons or property, or with intent by force or violence to resist or oppose the execution of the laws of this state, arrives at the place of such unlawful, riotous, or tumultuous assembly, they shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all persons who are committing any of said offences, as they have received from the governor, or any judge of a court of record, or the sheriff of the county, and also such orders as they there receive from any two of the magistrates or officers before mentioned.

SECT. 6. If, by reason of the efforts made by any two or more of said magistrates or officers, or by their direction, to disperse such assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person, or other person then present, is killed or wounded, the magistrates and officers, and all persons acting by their order, or under their directions, and all persons acting under the two preceding sections, shall be held guiltless and fully justified in law; and if any of said magistrates or officers, or any person acting under or by the direction of any of the officers before mentioned, is killed or wounded, all persons so assembled, and all other persons who, when commanded or required, refused to aid and assist said magistrates or officers, shall be held answerable therefor.

SECT. 7. If any of the persons so unlawfully assembled demolishes, pulls down, or destroys, or begins to demolish, pull down, or destroy, any dwelling-house, or other building, or ship or vessel, he shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years, and shall also be answerable to any person injured, to the full amount of the damage, in an action of tort.

SECT. 8. When property of the value of fifty dollars or more is destroyed, or property is injured to that amount, by any persons to the number of twelve or more, riotously, rontously, or tumultuously assembled, the city or town within which the property was situated shall be liable to indemnify the owner thereof, to the amount of three-fourths of the value of the property destroyed, or of the amount of such injury thereto, to be recovered in an action of tort: *provided*, that the owner of such property uses all reasonable diligence to prevent its destruction or injury, and to procure the conviction of the offenders.

SECT. 9. A city or town which pays any sum under the provisions of the preceding section may recover the same against any or all of the persons who destroyed or injured such property.

SECT. 10. Whoever when arrested upon a warrant of a magistrate issued against him for an alleged offence against the laws of this state, and whoever when arrested by a sheriff, deputy-sheriff, constable, police officer, or watchman, while committing a criminal offence against the laws of this state, or a breach or disturbance of the public peace, is armed with, or has on his person, slung shot, metallic knuckles, billies, or other dangerous weapon, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the jail not exceeding one year.

SECT. 11. Whoever manufactures, or causes to be manufactured, or sells, or exposes for sale, any instrument or weapon of the kind usually known as slung shot, or metallic knuckles, shall be punished by fine not less than fifty dollars, or by imprisonment in the jail not exceeding six months.

SECT. 12. Whoever is concerned in causing or making a bonfire within ten rods of any house or building shall be punished by fine not exceeding twenty dollars, or imprisonment not exceeding one month.

SECT. 13. Whoever without reasonable cause, by outcry, or the ringing of bells, or otherwise, makes or circulates, or causes to be made or circulated, a false alarm of fire, shall be punished by fine not exceeding fifty dollars.

CHAPTER 165.

OF OFFENCES AGAINST CHASTITY, MORALITY, AND DECENCY.

Section	Section
1. Abduction of an unmarried female under sixteen for the purpose of marriage ;	21. Disturbing religious worship.
2. of unmarried women, &c., for the purpose of prostitution. Limitation.	22. Gaming, &c., within a mile of place of field meeting for religious purposes.
3. Adultery.	23. Disturbance of schools and public meetings ;
4. Polygamy.	24. of funerals.
5. Excepted cases.	25. Drunkenness ;
6. Lewd and lascivious cohabitation, and open and gross lewdness.	26. second conviction ;
7. Incest.	27. in the city of Boston.
8. Fornication.	28. Rogues, vagabonds, &c. ;
9. Unlawful attempts, &c., to procure miscarriage.	29. may be punished by fine, and sentenced conditionally.
10. Advertising, &c., notices, &c., of means to procure abortion.	30. Master of house of industry, &c., to receive persons committed, &c.
11. Concealment by mother of death of bastard child.	31. Party committing offences, under section twenty-eight, after appeal.
12. Offence may be inserted in indictment for murder.	32. Respondent may be discharged on recognisance, paying costs.
13. Keeping house of ill fame.	33. Disorderly persons arrested in night time.
14. Lease of house so kept; void at option of lessor.	34. Conviction of certain offenders after discharge on former conviction.
15. Importing, selling, receiving, &c., obscene books or prints, &c.	35. Night-walking, third conviction.
16. Police court, &c., may issue search warrant for such books, &c., and cause to be destroyed.	36. Sheriff, &c., taking a dead body.
17. Half of fine to be paid to prosecutor.	37. Violation of sepulture.
18. Crime against nature.	38. Buying or having dead body for the purpose of sale, &c.
19. Blasphemy.	39. Injuring or defacing tombs, memorials of the dead, &c.
20. Profane cursing and swearing.	40. Making roads, canals, &c., through burial grounds.
	41. Cruelty to animals.

SECTION 1. Whoever fraudulently and deceitfully entices or takes away an unmarried female under the age of sixteen years, from her father's house or wherever else she may be found, without the consent of the parent, guardian, or master, if any, under whose care and custody she is living, for the purpose of effecting a clandestine marriage of such female without such consent, shall be punished by imprisonment in the state prison not exceeding one year, or by fine not exceeding one thousand dollars, or by both fine and imprisonment in the jail.

Abduction of an unmarried female under sixteen for the purpose of marriage ;  
1852, 254.  
7 Gray, 484.

SECT. 2. Whoever fraudulently and deceitfully entices or takes away an unmarried woman, of a chaste life and conversation, from her father's house, or wherever else she may be found, for the purpose of prostitution at a house of ill-fame, assignation, or elsewhere, and whoever aids and assists in such abduction for such purpose, shall be punished by imprisonment in the state prison not exceeding three years, or in the common jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both fine and imprisonment in the jail. But no prosecution shall be commenced after two years from the commission of the offence.

of unmarried women, &c., for the purpose of prostitution. Limitation.  
1845, 216, §§ 1, 2.  
12 Met. 94.

SECT. 3. Whoever commits adultery shall be punished by imprisonment in the state prison not exceeding three years, or in the jail not exceeding two years ; or by fine not exceeding five hundred dollars ; and when the crime is committed between a married woman and a man who is unmarried, the man shall be deemed guilty of adultery.

Adultery.  
R. S. 130, § 1.  
21 Pick. 509.  
2 Met. 190.  
5 Met. 535.  
2 Cush. 551.  
6 Cush. 78.  
97 Mass. 59.

SECT. 4. Whoever, having a former husband or wife living, marries another person, or continues to cohabit with such second husband or wife in this state, shall (except in the cases mentioned in the following section) be deemed guilty of polygamy, and be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding three years, or by fine not exceeding five hundred dollars.

Polygamy.  
R. S. 130, § 2.  
1 Pick. 136.  
8 Pick. 483.  
7 Met. 472.  
2 Cush. 553.  
10 Allen, 196.  
105 Mass. 464.

Excepted cases.  
R. S. 130, § 8.  
6 Allen, 692.  
10 Allen, 196.  
11 Allen, 23.  
12 Allen, 188.

SECT. 5. The provision of the preceding section shall not extend to any person whose husband or wife has been continually remaining beyond sea, or has voluntarily withdrawn from the other, and remained absent for the space of seven years together, the party marrying again not knowing the other to be living within that time, nor to any person legally divorced from the bonds of matrimony, and not the guilty cause of such divorce.

Lewd and lascivious cohabitation, and open and gross lewdness.  
R. S. 130, § 4.  
1 Mass. 8.  
10 Mass. 153.

SECT. 6. If any man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, is guilty of open and gross lewdness and lascivious behavior, every such person shall be punished by imprisonment in the state prison not exceeding three years, or in the jail not exceeding two years, or by fine not exceeding three hundred dollars.

Incest.  
R. S. 130, § 18.

SECT. 7. Persons within the degrees of consanguinity within which marriages are prohibited or declared by law to be incestuous and void, who intermarry, or commit adultery or fornication with each other, shall be punished by imprisonment in the state prison not exceeding twenty years, or in the jail not exceeding three years.

Fornication.  
R. S. 130, § 5.  
1849, 132, § 3.

SECT. 8. If a man commits fornication with a single woman, each of them shall be punished by imprisonment in the jail not exceeding three months, or by fine not exceeding thirty dollars.

Unlawful attempts, &c., to procure miscarriage.  
1845, 27.

SECT. 9. Whoever, with intent to procure miscarriage of any woman, unlawfully administers to her, or advises or prescribes for her, or causes to be taken by her, any poison, drug, medicine, or other noxious thing, or unlawfully uses any instrument or other means whatever with the like intent, or with like intent aids or assists therein, shall, if the woman dies in consequence thereof, be imprisoned in the state prison not exceeding twenty, nor less than five, years, and if the woman does not die in consequence thereof, shall be punished by imprisonment in the state prison not exceeding seven years, nor less than one year, and by fine not exceeding two thousand dollars.

11 Gray, 85.  
14 Gray, 419.  
15 Gray, 187.  
16 Gray, 602.  
18 Allen, 554.

116th. 343

Advertising, &c., notices, &c., of means to procure abortion.  
1847, 83.

SECT. 10. Whoever knowingly advertises, prints, publishes, distributes, or circulates, or knowingly causes to be advertised, printed, published, distributed, or circulated, any pamphlet, printed paper, book, newspaper, notice, advertisement, or reference, containing words or language giving or conveying any notice, hint, or reference, to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop, or office, where, any poison, drug, mixture, preparation, medicine, or noxious thing, or any instrument or means whatever, or any advice, direction, information, or knowledge, may be obtained for the purpose of causing or procuring the miscarriage of any woman pregnant with child, shall be punished by imprisonment in the state prison or jail not exceeding three years, or by fine not exceeding one thousand dollars.

Concealment by mother of death of bastard child.  
R. S. 130, § 6.

SECT. 11. If a woman conceals the death of any issue of her body, which, if born alive, would be a bastard, so that it may not be known whether such issue was born alive or not, or whether it was not murdered, she shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the jail not exceeding one year.

Offence may be inserted in indictment for murder.  
R. S. 130, § 7.

SECT. 12. Any woman indicted for the murder of her infant bastard child, may also be charged in the same indictment with the offence described in the preceding section; and if on the trial the jury acquit her of the charge of murder, they may find her guilty of the concealment.

Keeping house of ill fame.  
R. S. 130, § 8.  
1849, 84.  
2 Gray, 356.  
11 Gray, 48.  
12 Allen, 177.  
Lease of house so kept, void at

SECT. 13. Whoever keeps a house of ill fame, resorted to for the purpose of prostitution or lewdness, shall be punished by imprisonment in the jail not exceeding two years.

SECT. 14. When the lessee of a dwelling-house is convicted of the offence mentioned in the preceding section, the lease or contract for



letting the house shall, at the option of the lessor, become void; and the lessor shall have the like remedy to recover the possession as against a tenant holding over after the expiration of his term.

option of lessor.  
R. S. 180, § 9.  
3 Pick. 23.

SECT. 15. Whoever imports, prints, publishes, sells, or distributes, any book, pamphlet, ballad, printed paper, or other thing, containing obscene language, or any obscene prints, pictures, figures, or descriptions, manifestly tending to the corruption of the morals of youth; or introduces into any family, school, or place of education, or buys, procures, receives, or has in his possession, any such book, pamphlet, ballad, printed paper, or other thing, either for the purpose of sale, exhibition, loan, or circulation, or with intent to introduce the same into any family, school, or place of education; shall be punished by imprisonment in the state prison not exceeding five years, or by imprisonment in the jail not exceeding two years, and fine not exceeding one thousand dollars.

Importing, selling, receiving, &c., obscene books or prints, &c.  
R. S. 180, § 10.  
17 Mass. 823.  
1 Cush. 66.  
See 1862, 168.

SECT. 16. Any police court or justice of the peace may issue a warrant for the purpose of searching for any obscene books, pamphlets, ballads, printed papers, or other things, mentioned in the preceding section, in the manner provided in chapter one hundred and seventy; and all such things found by an officer in executing a search warrant, or produced or brought into court, shall be safely kept so long as is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards shall be destroyed by order of the court before whom the same is brought.

Police court, &c., may issue search warrant for such books, &c., and cause to be destroyed.  
R. S. 180, § 11.  
See 1870, 242.

SECT. 17. When a person is convicted under either of the two preceding sections, and sentenced to pay a fine, there shall be paid to the person who informed and prosecuted such offender to conviction, one-half of the amount of the fine actually paid by such convict.

Half of fine to be paid to prosecutor.  
R. S. 180, § 12.  
1862, 312, § 60.

SECT. 18. Whoever commits the abominable and detestable crime against nature, either with mankind, or with any beast, shall be punished by imprisonment in the state prison not exceeding twenty years.

Crime against nature.  
R. S. 180, § 14.

SECT. 19. Whoever wilfully blasphemes the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world, or by cursing or contumeliously reproaching Jesus Christ, or the Holy Ghost, or by cursing or contumeliously reproaching the holy word of God, contained in the holy scriptures, or exposing them to contempt and ridicule, shall be punished by imprisonment in the state prison not exceeding two years, or in the jail not exceeding one year, or by fine not exceeding three hundred dollars, and may also be bound to good behavior.

Blasphemy.  
R. S. 180, § 15.  
20 Pick. 203.

SECT. 20. Whoever, having arrived at the age of discretion, profanely curses or swears, shall, on conviction before any justice of the peace or police court, be punished by fine not exceeding five dollars nor less than one dollar; but no prosecution shall be commenced after twenty days from the commission of the offence.

Profane cursing and swearing.  
R. S. 180, § 16.

SECT. 21. Whoever wilfully interrupts or disturbs any assembly of people met for the worship of God shall be punished by imprisonment in the jail not exceeding thirty days, or by fine not exceeding fifty dollars.

Disturbing religious worship.  
R. S. 180, § 17.  
2 Mass. 163.

SECT. 22. (R.) [Whoever, during the time of holding any camp or field meeting for religious purposes, and within one mile of the place of holding such meeting, hawks or peddles goods, wares, merchandise, or, without permission from the authorities having charge of such meeting, establishes any tent or booth, for vending provisions or refreshments, or practises or engages in gaming or horse-racing, or exhibits or offers to exhibit, shows or plays, shall forfeit for each offence a sum not exceeding twenty dollars: *provided*, that a person having his regular and usual place of business within such limits, is not hereby required to suspend his business.]

Gaming, &c., within a mile of place of field meeting for religious purposes.  
1858, 143.

(R.) Repeal and substitute.  
1867, 59.  
See 1864, 231.

Disturbance of  
schools and pub-  
lic meetings;  
1849, 59.  
1 Gray, 476.

of funerals.  
1851, 138.  
1 Gray, 480.

Drunkenness;  
R. S. 130, § 18.  
See 1860, 166.  
1860, 463.  
1872, 301.  
8 Gray, 484.

156m.340

second convic-  
tion;  
1850, 268.

in the city of  
Boston.  
1855, 58.  
See 1864, 258.

Rogues, vaga-  
bonds, &c.;  
R. S. 148, § 6.  
1837, 217.  
1850, 186.  
8 Met. 513.  
6 Gray, 55.  
See §§ 31, 34.  
Ch. 178, §§ 17, 58.

See 1864, 258.  
1868, 209, § 4.  
1868, 235.  
1869, 258.  
14 Gray, 397.  
1 Allen, 6.  
4 Allen, 313.  
5 Allen, 511.  
12 Allen, 550.

may be pun-  
ished by fine,  
and sentenced  
conditionally.  
R. S. 143, § 6.  
1837, 157.  
1851, 346.  
8 Met. 513.

Master of house  
of industry, &c.,  
to receive persons  
committed, &c.  
R. S. 87, § 41.  
R. S. 143, § 6.  
1851, 346.

SECT. 23. Whoever wilfully interrupts or disturbs any school or other assembly of people met for a lawful purpose, shall be punished by imprisonment in the jail not exceeding thirty days, or by fine not exceeding fifty dollars.

SECT. 24. Whoever wilfully interrupts, or by fast driving or otherwise in any way disturbs, a funeral assembly or procession, shall be punished by imprisonment in the jail not exceeding thirty days, or by fine not exceeding fifty dollars.

SECT. 25. Whoever is guilty of drunkenness by the voluntary use of intoxicating liquor shall for the first offence be punished by fine not exceeding five dollars, and for any like offence committed after the first conviction, by fine not exceeding ten dollars, or by imprisonment in the house of correction not exceeding three months; but no prosecution shall be commenced after six months from the commission of the offence.

SECT. 26. Whoever has become liable to imprisonment in the house of correction upon a second conviction for the crime of drunkenness, may be committed to the workhouse, if any, in the town or city where the offence was committed, instead of the house of correction.

SECT. 27. A person convicted of the crime of drunkenness in the city of Boston, may be committed, in case of non-payment of the fine, to the house of industry instead of the jail or house of correction. The term of imprisonment and the manner of pardon and discharge shall in all respects be the same as are provided in cases where such persons are held in prison in the county of Suffolk for non-payment of fine and costs.

SECT. 28. Rogues and vagabonds, idle and dissolute persons who go about begging, persons who use any juggling or unlawful games or plays, common pipers and fiddlers, stubborn children, runaways, common drunkards, common night walkers, pilferers, lewd, wanton, and lascivious persons in speech or behavior, common railers and brawlers, persons who neglect their calling or employment, mispend what they earn and do not provide for themselves or for the support of their families, and all other idle and disorderly persons, including therein those persons who neglect all lawful business and habitually mispend their time by frequenting houses of ill fame, gaming houses, or tipling shops, may, upon conviction, be committed, for a term not exceeding six months, to the house of correction, or to the house of industry or workhouse within the city or town where the conviction is had, or to the workhouse, if any there is, in the city or town in which the offender has a legal settlement, if such town is within the county.

SECT. 29. When a person is convicted, by a justice of the peace or police court, of any offence mentioned in the preceding section, he may, instead of the punishment therein mentioned, be punished by fine not exceeding twenty dollars, either with or without a condition that if the same with the costs of prosecution is not paid within a time specified, he shall be committed to the house of correction, house of industry, or workhouse, as is provided in the preceding section; which conditional sentence shall be carried into execution according to the provisions of section seven of chapter one hundred and seventy-four.

SECT. 30. The master, keeper, director, or overseer, of a house of industry or workhouse to which any person is committed under the two preceding sections, shall receive all persons so committed, set them to work if they are able, and employ and govern them in the manner required by law and prescribed by the rules and orders established for that purpose; and the city or town in which such house is situated may recover the balance of the expense of the support of any such person over and above the amount of his labor, from the party thus sentenced, or from any kindred, town, or city, liable by law for his support, if he is

a pauper, in like manner as if he had been committed to the house of correction for the same offence.

SECT. 31. If any person convicted under the provisions of section twenty-eight appeals from the sentence, the commission of any like offence by him before judgment on the appeal, shall be deemed a breach of the condition of the recognizance, if any was taken upon allowing the appeal.

Party committing offences under section twenty-eight, after appeal.  
R. S. 143, § 8.

SECT. 32. When a person is brought before a magistrate upon a charge of any offence mentioned in section twenty-eight, such magistrate, or the court before which the cause may be carried by appeal, may in any stage of the proceedings direct the respondent or appellant to be discharged, upon his entering into a recognizance with sufficient sureties, in such sum as the magistrate or court directs, for his good behavior for a term not less than six months nor exceeding two years, and paying the costs of prosecution or such part thereof as the magistrate or court shall direct.

Respondent may be discharged on recognizance, paying costs  
R. S. 143, § 9.

SECT. 33. A person found in a street, highway, or other public place, in the night time, committing any of the offences or disorders before mentioned, may be apprehended by any sheriff, deputy-sheriff, constable, or watchman, or by any other person by the order of any magistrate or either of said officers, without a written warrant, and kept in custody in a convenient place, not more than twenty-four hours, Sundays excepted; at or before the expiration of which time, he shall be brought before a justice of the peace or police court, and proceeded against in the manner directed in the preceding section, or discharged, as such magistrate shall determine.

Disorderly persons arrested in night time.  
R. S. 143, § 7.

SECT. 34. If a person discharged under the provisions of section seventeen of chapter one hundred and seventy-eight, is afterwards convicted of any offence mentioned in section twenty-eight, committed after the former conviction, either in the same or a different county, he may be sentenced by the magistrate or court before whom the second conviction is had, to hard labor in the house of correction, house of industry, or workhouse, for a term not exceeding one year.

Conviction of certain offenders after discharge on former conviction.  
R. S. 143, § 18.

SECT. 35. When a person is convicted as a common night walker, and it is alleged in the complaint, and proved at the trial, that the defendant has been previously twice convicted of the same offence, such person may be sentenced to the house of correction, house of industry, or workhouse, if any such is established in the town or city, for a term not exceeding five years.

Night walking, third conviction.  
1856, c. 89, § 1  
See Ch. 173, § 18.  
See 1839, 258.

1874, 385 22

SECT. 36. If a sheriff, deputy-sheriff, coroner, or constable, takes the body of any deceased person, on mesne process or execution, he shall be punished by fine not exceeding five hundred dollars, or imprisonment in the jail not exceeding six months.

Sheriff, &c., taking a dead body.  
R. S. 14, § 81.

SECT. 37. Whoever not being authorized by the board of health, overseers of the poor, directors of a workhouse, selectmen, or mayor and aldermen, of any city or town, by the board of directors for public institutions, or overseers of the poor of the city of Boston, wilfully digs up, disinters, removes, or conveys away, any human body, or the remains thereof, or knowingly aids in such disinterment, removal, or conveying away, and whoever is accessory thereto, either before or after the fact, shall be punished by imprisonment in the state prison not exceeding one year, or in the jail not exceeding two years, or by fine not exceeding two thousand dollars.

Violation of sepulture.  
R. S. 130, § 19.  
1867, c. 85.  
10 Pick. 87.  
19 Pick. 304.

SECT. 38. Whoever buys, sells, or has in his possession for the purpose of buying or selling, or trafficking in, the dead body of any human being, shall be punished by fine of not less than fifty nor exceeding five hundred dollars, or by imprisonment in the jail not less than three months, nor exceeding three years.

Buying or having dead body for the purpose of sale, &c.  
1866, c. 323, §§ 2, 3.

SECT. 39. Whoever wilfully destroys, mutilates, defaces, injures, or removes, any tomb, monument, gravestone, or other structure, or thing,

Injuring or defacing tombs,

memorials of the  
dead, &c.  
R. S. 180, § 20.  
100 Mass. 181.

Making roads,  
canals, &c.,  
through burial  
grounds.

R. S. 24,  
§§ 59, 60.  
R. S. 130, § 21.

Cruelty to ani-  
mals.  
R. S. 130, § 22.  
See 1868, 212,  
§ 10.  
1869, 844, § 9.  
7 Allen, 679.  
101 Mass. 84.

108 Me. 457

placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing, intended for the protection or ornament of any tomb, monument, gravestone, or other structure, before mentioned, or of any enclosure for the burial of the dead, or wilfully destroys, mutilates, removes, cuts, breaks, or injures, any tree, shrub, or plant, placed or being within any such enclosure, or wantonly or maliciously disturbs the contents of a tomb or grave, shall be punished by fine not exceeding five hundred dollars nor less than ten dollars, or by imprisonment in the jail not exceeding one year.

SECT. 40. Whoever lays out, opens, or makes, a highway or town way, or constructs a railroad, turnpike, or canal, or any other thing in the nature of a public easement, over, through, in, or upon, any part of such enclosure, being the property of a city, town, parish, religious society, or of private proprietors, used or appropriated for the burial of the dead, unless an authority for that purpose is specially granted by law, or unless the consent of such city, town, parish, religious society, or proprietors, respectively, is first obtained, shall be punished by fine not exceeding two thousand dollars, or by imprisonment in the jail not exceeding one year.

SECT. 41. Whoever cruelly beats or tortures any horse, ox, or other animal, whether belonging to himself or another, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding one hundred dollars.

## CHAPTER 166.

[See 1872, 281.]

### OF OFFENCES AGAINST THE PUBLIC HEALTH.

#### SECTION

1. Selling corrupt or unwholesome provisions without notice.
2. Killing for sale or selling calves less than four weeks old.
3. Adulterating food ;
4. Liquor, &c., with *coccus indicus*, &c.

#### SECTION

5. Adulteration of drugs and medicines.
6. Wilfully corrupting springs, &c., or injuring aqueduct.
7. Persons selling arsenic, &c., to keep meat, &c. Purchasers who give false names, &c.

Selling corrupt or  
unwholesome  
provisions with-  
out notice.  
R. S. 181, § 1.  
12 Cush. 450.

Killing for sale or  
selling calves less  
than four weeks  
old  
1866, 239.

(R.) Repeat and  
substitute.  
1868, 268.  
Adulterating  
food ;  
R. S. 181, § 2.

Liquor used for  
drink, with *coccus  
indicus*, &c.  
1866, 856.

SECTION 1. Whoever know or unwholesome provisions, w the same fully known to the in the jail not exceeding six r dred dollars.

SECT. 2. (R.) [Whoever k sale, any calf less than four w possession with intent to sell, four weeks old, shall be punis dollars.]

SECT. 3. Whoever fraudul bread or any other substance i jurious to health, shall be p exceeding one year, or by fin and the articles so adulterated the direction of the court.

SECT. 4. Whoever adulter used or intended for drink, wi dise, opium, alum, capsicum, wood, cochineal, sugar of lead,

1876 c. 180

or injurious to health; and whoever knowingly sells any such liquor so adulterated, shall be punished by imprisonment in the state prison not exceeding three years; and the articles so adulterated shall be forfeited.

SECT. 5. Whoever fraudulently adulterates, for the purpose of sale, any drug or medicine, or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding four hundred dollars; and such adulterated drugs and medicines shall be forfeited, and destroyed under the direction of the court.

Adulteration of  
drugs and medi-  
cines.  
1863, 394, § 1.

SECT. 6. Whoever wilfully or maliciously defiles, corrupts, or makes impure, any spring or other source of water or reservoir, or destroys or injures any pipe, conductor of water, or other property, pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the jail not exceeding one year.

Wilfully corrupt-  
ing springs, &c.,  
or injuring aque-  
duct.  
1843, 65, § 2.

SECT. 7. If an apothecary or other person sells any arsenic, strychnine, corrosive sublimate, or prussic acid, without the written prescription of a physician, he shall keep a record of the date of such sale, the article, the amount thereof sold, and the person or persons to whom delivered; and for each neglect he shall forfeit a sum not exceeding fifty dollars. Whoever purchases deadly poisons, as aforesaid, and gives a false or fictitious name to the apothecary or other person, shall be punished by fine not exceeding fifty dollars.

Persons selling  
arsenic, &c., to  
keep record, &c.  
Purchasers who  
give false name,  
&c.  
1857, 280, §§ 1, 2.

## CHAPTER 167.

[See 1860, 196; 1869, 436.]

### OF OFFENCES AGAINST PUBLIC POLICY.

#### SECTION

1. Setting up or promoting illegal lotteries, gifts, &c.
2. Permitting lotteries, &c., to be set up, &c., in a house, &c.
3. Selling lottery tickets, shares, &c., or aiding therein.
4. Second conviction.
5. Advertising lottery tickets for sale. Exhibiting representation of lottery, &c.
6. Making or selling tickets in a fictitious lottery.

#### SECTION

7. Defendant to prove genuineness, &c., of tickets sold by him.
8. Prizes, &c., forfeited to the state.
9. Racing, &c., declared unlawful. Penalty.
10. Location and regulation of race grounds and trotting parks. Selectmen, &c., may alter terms.
11. Unlawful race grounds deemed nuisances. Penalty.

*Fighting of dogs & birds  
1876, 85-*

SECTION 1. Whoever sets up or promotes any lottery for money; or by way of lottery disposes of any property of value, real or personal; or under the pretext of a sale, gift, or delivery, of any other property, or any right, privilege, or thing, whatever, disposes of, or offers or attempts to dispose of, any real or personal property, with an intent to make the disposal of such real or personal property dependent upon or connected with any chance by lot, dice, numbers, game, hazard, or other gambling device, whereby such chance or device is made an additional inducement to the disposal or sale of said property; and whoever aids either by printing or writing, or is in any way concerned, in the setting up, managing, or drawing, of any such lottery, or in such disposal, or offer, or attempt, to dispose of property by any such chance or device; shall for each offence be punished by fine not exceeding two thousand dollars.

Setting up or  
promoting illegal  
lotteries, gifts,  
&c.  
R. S. 122, § 1.  
1856, 121, § 1.  
8 Pick. 73.  
2 Met. 329, 338.  
2 Gray, 69.  
See 1869, 112.  
13 Allen, 531.  
97 Mass. 583.

SECT. 2. Whoever in a house, shop, or building, owned or occupied by him or under his control, knowingly permits the setting up, managing, or drawing, of such lottery, or such disposal or attempt to dispose of

Permitting lot-  
teries, &c., to be  
set up, &c., in a  
house, &c.

R. S. 182, § 1.  
1866, 121, § 1.  
2 Gray, 69.

property, or the sale of a lottery ticket, or share of a ticket, or any other writing, certificate, bill, token, or other device, purporting or intended to entitle the holder, bearer, or any other person, to a prize, or to a share of or interest in a prize, to be drawn in a lottery, or in such disposal of property; and whoever knowingly suffers money or other property to be raffled for in such house, shop, or building, or to be won there by throwing or using dice, or by any other game of chance; shall for each offence be punished by fine not exceeding two thousand dollars.

Selling lottery tickets, shares, &c., or aiding therein.

R. S. 182, § 2.  
1866, 121, § 1.  
2 Met. 329, 338.

See 1869, 112, § 2.

SECT. 3. Whoever sells, either for himself or another person, or offers for sale, or has in his possession with intent to sell or offer for sale, or to exchange or negotiate, or in any wise aids or assists in the selling, negotiating, or disposing of, a ticket in any such lottery, or a share of a ticket, or any such writing, certificate, bill, token, or other device, or any share or right in such disposal or offer, as is mentioned in section one, shall for each offence be punished by fine not exceeding two thousand dollars.

Second conviction.

R. S. 182, § 3.  
1866, 121, § 1.

SECT. 4. Whoever, after being convicted of any offence mentioned in either of the preceding sections, commits the like offence, or any other of the offences therein mentioned, shall, in addition to the fine before provided therefor, be punished by imprisonment in the house of correction not exceeding one year.

Advertising lottery tickets for sale. Exhibiting representation of lottery, &c.

R. S. 182, § 4.  
6 Pick. 41, 42.

SECT. 5. Whoever advertises any lottery ticket, or any share in such ticket, for sale, either himself or by another person, or sets up or exhibits, or devises or makes for the purpose of being set up or exhibited, any sign, symbol, or emblematic or other representation, of a lottery or the drawing thereof, in any way indicating where a lottery ticket or a share thereof, or any such writing, certificate, bill, token, or other device, before mentioned, may be purchased or obtained, or in any way invites or entices, or attempts to invite or entice, any other person to purchase or receive the same, shall for each offence be punished by fine not exceeding one hundred dollars.

Making or selling tickets in a fictitious lottery.

R. S. 182, § 5.  
18 Allen, 584.  
97 Mass. 682.

SECT. 6. Whoever makes or sells, or has in his possession with intent to sell, exchange, or negotiate; or by printing, writing, or otherwise, assists in making or selling, or in attempting to sell, exchange, or negotiate a false or fictitious lottery ticket, or any share thereof, or any writing, certificate, bill, token, or other device, before mentioned, or any ticket, or share thereof, in a fictitious or pretended lottery, knowing the same to be false or fictitious; or receives any money or other thing of value for any such ticket or share of a ticket, writing, certificate, bill, token, or other device, purporting that the owner, bearer, or holder, thereof, shall be entitled to receive other thing of value, that may be found to be false or fictitious; shall for each offence be punished by imprisonment in the state prison not exceeding one year.

Defendant to prove genuineness, &c., of tickets sold by him.

R. S. 182, § 6.  
18 Allen, 584.

SECT. 7. Upon the trial of an offence mentioned in the preceding sections, if the defendant proves that the same was authorized by the authority of some legislature or other writing or thing before mentioned, and binding upon the persons who sold or offered for sale, or for which the offence was committed, the defendant shall be deemed to be innocent.

Prizes, &c., forfeited to the state.

R. S. 182, § 8.  
1866, 121, §§ 1, 2.

SECT. 8. All sums of money and other property, as a prize or as a share of a prize in any lottery, or disposed of or offered to be disposed of, or offered to be disposed of, under the pretext mentioned in section one, by any person, or resident within this state, and a

value received by any such person, by reason of his being the owner or holder of any ticket or share of a ticket in a lottery or pretended lottery, or of a share or right in any such scheme of chance or such device, contrary to the provisions of this chapter, shall be forfeited, and may be recovered by an information filed, or by an action for money had and received brought by the attorney-general or any district-attorney or other prosecuting officer in the name and on behalf of the commonwealth.

SECT. 9. All racing, running, trotting, or pacing, of any horse or other animal of the horse kind, for a bet or wager of money or other valuable thing, or for a purse or stake, made within this state, is declared to be unlawful; and all persons engaged in such racing, running, trotting, or pacing, for any such bet or wager, purse or stake, and all persons aiding or abetting the same, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the jail not exceeding one year, or by both such fine and imprisonment.

SECT. 10. No land within any town or city shall be laid out or used as a race ground or trotting park, for the admission to which of persons or property, any money or other valuable consideration shall be directly or indirectly taken or required, without the previous consent of and location by the selectmen or mayor and aldermen; who may regulate and alter the terms and conditions under which the same shall be laid out, used, or continued in use; and discontinue the same when in their judgment the public good so requires; and no land shall be used for any of the purposes mentioned in the preceding section.

SECT. 11. Every race ground or trotting park established, laid out, used, or continued in use, contrary to the provisions of this chapter, is declared a common nuisance, and shall be abated as such; and all persons owning, keeping, using, or permitting to be used, such race ground or trotting park, or aiding or abetting therein, shall be punished in the manner provided in section nine.

Racing, &c., declared unlawful. Penalty. 1846, 200, §§ 1, 2. See 1866, 67. 102 Mass. 406.

Location and regulation of race grounds and trotting parks. Selectmen, &c., may alter terms. 1866, 102, § 1. See 1864, 68.

Unlawful race grounds deemed nuisances. Penalty. 1866, 102, §§ 2, 3.

## CHAPTER 168.

### OF FELONIES, ACCESSORIES, ABETTORS, AND ATTEMPTS TO COMMIT CRIMES.

#### SECTION

1. Felony.
2. Indictments, &c., for, not to be quashed, &c.
3. Persons accessory before fact, punished as principals.

#### SECTION

4. Accessories before fact, when and how tried;
5. where to be tried.
6. Accessories after fact, who shall be deemed;
7. how, when, and where, tried.
8. Attempts to commit offences.

SECTION 1. Any crime punishable by death or imprisonment in the state prison is a felony; and no other crime shall be so considered.

SECT. 2. It shall not be necessary to allege in any indictment or complaint that the offence charged is a felony, or felonious, or done feloniously; nor shall any indictment or complaint be quashed or deemed invalid by reason of the omission of the words "felony," "felonious," or "feloniously."

SECT. 3. Whoever aids in the commission of a felony, or is accessory thereto before the fact, by counselling, hiring, or otherwise procuring, such felony to be committed, shall be punished in the manner prescribed for the punishment of the principal felon.

Felony. 1862, 37, § 1. 3 Gray, 446. 12 Cush. 252. 11 Allen, 257. Indictments, &c., for, not to be quashed, &c. 1862, 37, § 3. 1863, 23.

Persons accessory before fact punished as principals. R. S. 133, § 1. 3 Gray, 441, 448.

Accessories before fact, when and how tried;  
R. S. 133, § 2.  
16 Mass. 423.  
8 Gray, 448.  
101 Mass. 204.  
11 Allen, 258.

111 4 395

where to be tried.  
R. S. 133, § 3.  
11 Allen, 258.

Accessories after fact who shall be deemed;  
R. S. 133, § 4.

how, when, and where, tried.  
R. S. 133, § 5.

Attempts to commit offences.  
R. S. 133, § 12.  
10 Met. 422.  
3 Cush. 529.  
5 Cush. 385.  
105 Mass. 162.  
139, 480.

107 2 25

SECT. 4. Whoever counsels, hires, or otherwise procures, a felony to be committed, may be indicted and convicted as an accessory before the fact, either with the principal felon, or after his conviction; or may be indicted and convicted of a substantive felony, whether the principal felon has or has not been convicted, or is or is not amenable to justice; and in the last-mentioned case may be punished in the same manner as if convicted of being an accessory before the fact.

SECT. 5. A person charged with the offence mentioned in the preceding section may be indicted, tried, and punished, in the same court and county where the principal felon might be indicted and tried, although the offence of counselling, hiring, or procuring, the commission of such felony is committed on the high seas, or on land either within or without the limits of this state.

SECT. 6. Whoever, not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, to the offender, after the commission of a felony, harbors, conceals, maintains, or assists, the principal felon or accessory before the fact, or gives such offender any other aid, knowing that he has committed a felony, or been accessory thereto before the fact, with intent that he shall avoid or escape detection, arrest, trial, or punishment, shall be deemed an accessory after the fact, and be punished by imprisonment in the state prison not exceeding seven years, or in the jail not exceeding three years, or by fine not exceeding one thousand dollars.

SECT. 7. Whoever becomes an accessory to a felony after the fact may be indicted, convicted, and punished, (whether the principal felon has or has not been previously convicted, or is or is not amenable to justice,) by any court having jurisdiction to try the principal felon, and either in the county where such person became an accessory, or in the county where the principal felony was committed.

SECT. 8. Whoever attempts to commit an offence prohibited by law, and in such attempt does any act towards the commission of such offence, but fails in the perpetration, or is intercepted or prevented in the execution, of the same, where no express provision is made by law for the punishment of such attempt, shall be punished as follows:—

First. If the offence attempted to be committed is punishable with death, the person convicted of such attempt shall be punished by imprisonment in the state prison not exceeding ten years:

Second. If the offence so attempted to be committed is punishable by imprisonment in the state prison for life, or for five years or more, the person convicted of such attempt shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding one year:

Third. If the offence attempted to be committed is punishable by imprisonment in the state prison for a term less than five years, or by imprisonment in the jail, or by fine, the offender convicted of such attempt shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding three hundred dollars; but in no case shall the punishment by imprisonment exceed one-half of the greatest punishment which might have been inflicted if the offence attempted had been committed.



## TITLE II.

### OF PROCEEDINGS IN CRIMINAL CASES.

CHAPTER 169. — Of Proceedings to prevent the Commission of Crimes.

CHAPTER 170. — Of Search Warrants, Rewards, Arrest, Examination, Commitment and Bail.

CHAPTER 171. — Of Indictments, Prosecutions, and Proceedings before Trial.

CHAPTER 172. — Of Trials.

CHAPTER 173. — Of Appeals, New Trials, and Reports.

CHAPTER 174. — Of Judgment and Execution.

CHAPTER 175. — Of Inquests on Dead Bodies.

CHAPTER 176. — Of Fines, Forfeitures, and Costs.

CHAPTER 177. — Of Fugitives from Justice and Pardons.

## CHAPTER 169.

### OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

#### SECTION

1. Officers authorized to keep the peace.
2. Complaint, how made.
3. Arrest.
4. Trial. Recognizance to keep the peace.
5. Proceedings upon an order to recognize, &c.
6. Complainant, when to pay costs.
7. Payment of costs in other cases.
8. Appeal.
9. Witnesses to recognize.
10. Proceedings on appeal.
11. Recognizance, when to remain in force.

#### SECTION

12. Person committed for not recognizing discharged.
13. Recognizands to be transmitted to court thereon;
14. when to be required on view of co-magistrate.
15. Persons who go armed may be required sureties for the peace, &c.
16. Court may remit part of penalty.
17. Surety may surrender his principal, who recognize anew.

SECTION 1. The justices of the supreme judicial court, superior and police courts, in vacation or in open court, and justices of the peace, may cause to be kept all laws made for the preservation of the peace; and in the execution of that power may require persons to give security to keep the peace, or for their good behavior, or both, as provided in this chapter.

SECT. 2. When complaint is made to any such magistrate, that a person has threatened to commit an offence against the person or property of another, the magistrate shall examine on oath the complainant and any witnesses who may be produced, reduce the complaint to writing, and cause it to be subscribed by the complainant.

SECT. 3. If upon examination it appears that there is just cause to fear that such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, requiring the officer to whom it is directed forthwith to apprehend the person complained of, and bring him before such magistrate or some other magistrate or court having jurisdiction of the cause.

SECT. 4. When the party complained of is brought before the court or magistrate, he shall be heard in his defence, and may be required

R. S. 184, § 4.  
2 B. & A. 278.  
4 Mass. 497.  
8 Mass. 78.

enter into a recognizance with sufficient sureties in such sum as the court or magistrate directs, to keep the peace towards all the people of this commonwealth, and especially towards the person requiring such security, for such term, not exceeding six months, as the court or magistrate may order; but he shall not be bound over to the next court, unless he is also charged with some other offence for which he ought to be held to answer at such court.

Proceedings upon  
an order to recog-  
nize, &c.  
R. S. 184, §§ 5, 6.

SECT. 5. If the person so ordered to recognize complies with the order, he shall be discharged; but if he refuses or neglects, the court or magistrate shall commit him to the jail, house of correction, or house of industry, during the period for which he was required to give security, or until he so recognizes, stating in the warrant the cause of commitment, with the sum and time for which security was required.

Complainant,  
when to pay  
costs.  
R. S. 184, § 7.

SECT. 6. If upon examination it does not appear that there is just cause to fear that such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate deems the complaint unfounded, frivolous, or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

Payment of costs  
in other cases.  
R. S. 184, § 8.

SECT. 7. When no order respecting the costs is made by the court or magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security to keep the peace, or for his good behavior, the court or magistrate may further order, that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until the costs are paid or he is otherwise legally discharged.

Appeal.  
R. S. 184, § 9.  
1852, 14.  
1859, 196.

SECT. 8. Whoever is aggrieved by the order of a justice of the peace or police court, requiring him to recognize as aforesaid, may on giving the security required appeal to the superior court next to be held in the same county.

1874, 33

Witnesses to  
recognize.  
R. S. 184, § 10.

SECT. 9. The court or magistrate shall require such witnesses as may be necessary to support the complaint, to recognize for their appearance at the court appealed to.

Proceedings on  
appeal.  
R. S. 184, § 11.

SECT. 10. The court before which the appeal is prosecuted may affirm the order or discharge the appellant, or may require him to enter into a new recognizance with sufficient sureties in such sum and for such time as the court deems proper, and may make such order in relation to the costs of prosecution as may be deemed just and reasonable.

Recognizance,  
when to remain  
in force.  
R. S. 184, § 12.

SECT. 11. If the appellant fails to prosecute his appeal, his recognizance shall remain in full force and condition, without an affirmation of the court or magistrate, and shall also stand in relation to orders to be made by the court appealed to.

Person commit-  
ted for not recog-  
nizing, how dis-  
charged.  
R. S. 184, § 13.

SECT. 12. A person committed for not recognizing as required by the court or magistrate, shall be discharged by any judge or justice of the peace.

Recognizances to  
be transmitted to  
court.  
Suits thereon;  
R. S. 184, § 14.  
1852, 14.  
1859, 196.

SECT. 13. Every recognizance shall be transmitted by the court or magistrate to the clerk of the court where it is filed of record by the clerk, and the suit shall be commenced thereon.

when to be re-  
quired on view of  
court or magis-  
trate.  
R. S. 184, § 15.

SECT. 14. Whoever in the presence of a justice of the peace, or before any court to kill or beat another, or to commit any offence against a person or property, and whoever contends with hot and open violence, may be ordered, without

for keeping the peace or being of good behavior for a term not exceeding three months, and in case of refusal may be committed as before directed.

SECT. 15. Whoever goes armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, may on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appeal as before provided.

Persons who go armed may be required to find sureties for the peace, &c.  
R. S. 143, § 16.

SECT. 16. When, upon a suit brought on such recognizance, the penalty thereof is adjudged forfeited, the court may, on the petition of any defendant, remit such portion of it as the circumstances of the case render just and reasonable.

Court may remit part of penalty.  
R. S. 134, § 17.  
7 Mass. 397.

SECT. 17. A surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal, as if he had been bail for him in a civil cause; and upon such surrender shall be discharged and exempt from all liability for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance. The person so surrendered may recognize anew with sufficient sureties before any justice of the peace for the residue of the term, and shall thereupon be discharged.

Surety may surrender his principal, who may recognize anew.  
R. S. 134, § 18.

## CHAPTER 170.

### OF SEARCH WARRANTS, REWARDS, ARREST, EXAMINATION, COMMITMENT, AND BAIL.

#### SEARCH WARRANTS.

##### SECTION

1. Search warrants for property stolen, &c.
2. Search warrants in other cases;
3. to whom directed; when and how executed.
4. Search in the night time, when allowed.
5. Property seized may be kept as evidence, and then restored to owner or destroyed.

#### REWARDS FOR APPREHENDING OFFENDERS.

6. Governor may offer rewards, &c.
7. Mayor and aldermen, &c., may offer rewards, &c.
8. Payment of reward.

#### ARREST, EXAMINATION, COMMITMENT, AND BAIL.

9. Warrants to arrest, by whom issued;
10. how to issue;
11. in what cases executed out of county, &c.
12. Prisoners, when to be brought before magistrate on arrest, &c.
13. Magistrate taking bail, to return recognizance to court, &c.
14. Officer, how to proceed, if prisoner is not bailed;
15. to take prisoner to county where warrant issued;
16. to be taken before magistrate, &c.
17. Magistrate may adjourn examination, &c.
18. In case of default, magistrate to certify recognizance to court.
19. Proceedings when party fails to recognize.

##### SECTION

20. Manner of conducting examination;
21. on part of prisoner.
22. Witnesses may be kept separate, &c.
23. Testimony reduced to writing, &c.
24. Prisoner, when to be discharged;
25. when to be bailed or committed.
26. Witnesses to recognize;
27. may be required to give sureties.
28. Recognizances by married women and minors.
29. Witnesses refusing, shall be committed.
30. Depositions of witnesses may be taken in certain cases. Proceedings;
31. to be returned to court, &c.
32. Magistrate may have associates. Fees in such cases.
33. Commitments, when to be superseded, and recognizances discharged.
34. Orders therefor, how to be filed, and effect thereof.
35. Prisoners, how bailed if arrested after court adjourns;
36. how bailed when committed;
37. not to be bailed without notice, &c.;
38. when bailed on Lord's day.
39. Condition of recognizances.
40. Recognizances and examinations to be returned to court.
- 41, 42, 43. Bail may exonerate themselves, &c.;
44. may surrender principal, &c.
45. New bail not to have benefit, &c.
46. Defaults on forfeited recognizances.
47. Surety may pay amount of recognizances, &c.

## SECTION

48. Action and judgment on recognizances;  
 49. not to be defeated, &c., for certain irregularities.  
 50. Review of judgments on forfeited recognizances.

## SECTION

51. Review, petition for.  
 52. Proceedings when former judgment is disab-  
 lished;  
 53. when not diminished.  
 54. Offences not bailable.

*no bail twice, unless. 1874, 306*  
*Bail comm. Vi. § 5*

## SEARCH WARRANTS.

## Search warrants.

Decl. of rights,

art. 14.

R. S. 142, § 1.

5 Cush. 369.

1 Gray, 1.

See 1862, 188,

§§ 2-5.

1895, 127.

18 W. 253.

108 Mass. 466.

Same;

R. S. 142, § 2.

for counterfeit  
 coin, notes, &c.;

for obscene  
 books and prints;  
 See 1862, 188.

for lottery  
 tickets, &c.;

5 Cush. 369.

for gaming ap-  
 paratus, &c.;

11 Met. 79.

See 1869, 364.

to whom di-  
 rected, when and  
 how executed.

R. S. 142, § 3.

5 Met. 93.

2 Met. 329.

1875, 9, § 4

unsubstantiated 1876 c. 180 § 4

Search in the  
 night time, when  
 allowed.

R. S. 142, § 4.

Property seized  
 may be kept as  
 evidence, and  
 then restored to  
 owner or de-  
 stroyed.

R. S. 142, § 5.

See 1870, 242.

1872, 304.

SECTION 1. When complaint is made on oath to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen, embezzled, or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he is satisfied that there is reasonable cause for such belief, shall issue a warrant to search for such property.

SECT. 2. Any such magistrate may also, upon like complaint made on oath, issue search warrants when satisfied that there is reasonable cause, in the following cases, to wit: —

First. To search for and seize counterfeit or spurious coin, forged bank notes, and other forged instruments, or tools, machines, or materials, prepared or provided for making either of them:

Second. To search for and seize books, pamphlets, ballads, printed papers, or other things, containing obscene language, or obscene prints, pictures, figures, or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated, or distributed, or to be introduced into any family, school, or place of education:

Third. To search for and seize lottery tickets or materials for a lottery, unlawfully made, provided, or procured, for the purpose of drawing a lottery:

Fourth. To search for and seize gaming apparatus or implements used, or kept and provided to be used, in unlawful gaming, in any gaming house, or in any building, apartment, or place resorted to for the purpose of unlawful gaming.

SECT. 3. All search warrants shall be directed to the sheriff of the county or his deputy, or to any of the constables of a city or town, commanding such officer to search, in the day time, the house or place where the stolen property or other things for which he is required to search are believed to be concealed, (which place and property, or things to be searched for, shall be designated and described in the warrant,) and to bring such stolen property or other things when found, and the persons in whose pos-  
 strate who issued the warrant,  
 cognizance of the case.

SECT. 4. If there is satisfac-  
 embezzled, or obtained by fals  
 other things for which a search  
 of this chapter, are concealed  
 house or place, a warrant ma  
 police court, to authorize the a  
 lic officer, in the night time, s  
 cribed in the warrant, if foun  
 they are found, before either of  
 or some other magistrate or co

SECT. 5. When an officer i  
 stolen or embezzled property  
 which a search is allowed by th  
 erty and things so seized shal  
 court or magistrate, so long a  
 duced or used as evidence on a  
 all such stolen and embezzled

thereof, and all the other things seized by virtue of such warrants shall be burnt or otherwise destroyed under the direction of the court or magistrate.

#### REWARDS FOR APPREHENDING OFFENDERS.

SECT. 6. The governor, when in his opinion the public good requires it, may offer and pay a suitable reward, not exceeding one thousand dollars in one case, to any person who in consequence of such offer apprehends, brings back, and secures, any person convicted of or charged with a capital crime, or other high crime or misdemeanor, who has escaped from prison in this state, or to any person who in consequence of such offer apprehends and secures a person charged with such offence, when the person cannot be arrested and secured in the common course of proceeding. The governor with the advice of the council may draw his warrant on the treasury for the payment of every such reward.

Governor may offer rewards, &c.  
R. S. 142, § 14.  
R. S. act of amend. § 18.

SECT. 7. The mayor and aldermen or selectmen of any city or town, when in their opinion the public good requires it, may offer a suitable reward, to be paid by such city or town, not exceeding five hundred dollars in one case, to any person who in consequence of such offer secures any person charged with a capital crime or other high crime or misdemeanor committed in such place; and such reward shall be paid by the treasurer upon the warrant of the mayor and aldermen or selectmen.

Mayor, &c., may offer rewards, &c.  
1840, 75, § 1.  
5 Met. 66.  
7 Met. 409.  
5 Cush. 219.  
7 Gray, 274, 374.  
See 1863, 9.  
1869, 206.  
8 Allen, 477.

SECT. 8. When more than one claimant appears and applies for the payment of such reward, the mayor and aldermen or selectmen shall determine to whom the same shall be paid, and if to more than one person, in what proportion to each; and their determination shall be final and conclusive.

Payment of reward.  
1840, 75, § 2.  
See 1863, 9, § 2.

#### ARREST, EXAMINATION, COMMITMENT, AND BAIL.

SECT. 9. For the apprehension of persons charged with offences, the justices of the supreme judicial court, the superior court, or of any police court, in vacation as well as in term time, and all justices of the peace, are authorized to issue process, to carry into effect the following provisions of this chapter.

Warrants to arrest, by whom issued:  
R. S. 135, § 1.  
1859, 196.

SECT. 10. Upon complaint made to any such magistrate, that a criminal offence has been committed, he shall examine on oath the complainant and any witnesses produced by him, shall reduce the complaint to writing, and cause the same to be subscribed by the complainant, and if it appears that such offence has been committed, the court or justice shall issue a warrant, reciting the substance of the accusation, and requiring the officer to whom it is directed, forthwith to take the person accused and bring him before said court or justice or some other court or magistrate of the county, to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

how to issue;  
R. S. 135, § 2.  
R. S. 143, § 6.  
1 Cush. 503.  
4 Gray, 32.  
8 Gray, 443.  
9 Gray, 113, 233.  
7 Allen, 533.  
11 Allen, 233.

SECT. 11. If a person against whom a warrant is issued under the provisions of chapter seventy-two, or for any alleged offence, before or after the issuing of such warrant escapes from or is out of the county, the officer to whom such warrant is directed may pursue and apprehend the party charged, in any county of this state, and for that purpose may command aid and exercise the same authority as in his own county.

In what cases executed out of county, &c.  
R. S. 135, § 3.  
1846, 266.

SECT. 12. In all cases where the offence charged in a warrant is not punishable by death or imprisonment in the state prison, if the person arrested requests that he may be taken before a magistrate of the county in which the arrest was made, for the purpose of entering into a recognizance without a trial or examination, the officer who made the

Prisoners, when to be brought before magistrate on arrest, &c.  
R. S. 135, § 4.  
11 Gray, 446.  
See 1863, 159.

arrest shall carry him before a magistrate of that county, who may take from the person arrested a recognizance with sufficient sureties for his appearance at the court having cognizance of the offence, and next to be held in the county where it is alleged to have been committed, and the party arrested shall thereupon be liberated.

Magistrate taking  
bail, to return  
recognizance to  
court, &c.  
R. S. 185, § 6.  
See 1862, 159.

SECT. 13. The magistrate who so lets the person arrested to bail, shall certify that fact upon the warrant, and deliver the same with the recognizance to the officer, who shall cause the same to be delivered without unnecessary delay to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant, or the district-attorney, shall cause such witnesses as he thinks necessary to be summoned to the same court.

Officer, how to  
proceed if pris-  
oner is not  
bailed;  
R. S. 185, § 6.

SECT. 14. When a person is arrested in a county other than that in which the offence was committed, if the magistrate before whom he is brought refuses to admit him to bail, or if no sufficient bail is offered, the officer shall take him before the magistrate who issued the warrant, or in his absence before some other magistrate of, or police court in, the county in which the warrant was issued.

to take prisoner  
to county where  
warrant issued.  
R. S. 185, § 7.

SECT. 15. When the offence charged in a warrant is punishable with death, or by imprisonment in the state prison, if the officer makes the arrest in another county, he shall convey the prisoner to the county where the warrant was issued.

Person arrested  
to be taken before  
magistrate, &c.  
R. S. 185, § 8.  
1 Cush. 508.  
See 1862, 159.

SECT. 16. Every person arrested by warrant for any offence, where no other provision is made for his examination thereon, shall be brought before the magistrate who issued the warrant, or if he is absent or unable to attend, before some other magistrate of the same county; and the warrant, with a proper return thereon signed by the person who made the arrest, shall be delivered to the magistrate.

Magistrate may  
adjourn examina-  
tion, &c.  
R. S. 185, § 9.  
1862, 256.

SECT. 17. A magistrate may adjourn an examination or trial pending before himself, from time to time as occasion requires, not exceeding ten days at one time, without the consent of the defendant or person charged, and to the same or a different place in the county, as he deems necessary. In the mean time, if the party is charged with an offence not bailable, he shall be committed; otherwise he may be recognized in a sum and with sureties to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance he shall be committed to prison.

In case of default,  
magistrate to cer-  
tify recognizance  
to court.  
R. S. 185, § 10.

SECT. 18. If the person so committed to the custody of a magistrate or court according to the warrant, shall fail to appear at the time and place to which the matter may be called, the magistrate or court to which the matter may be called, And in case such default shall not be made, the magistrate shall certify the recognizance to the superior court, and like proceedings shall be taken in the superior court, and like proceedings shall be taken in the superior court.

Proceedings,  
when party fails  
to recognize.  
R. S. 185, § 11.

SECT. 19. When such person is committed to prison by an order under the warrant, that he is committed for further examination, or for trial, named in the order, and on the day so named, the magistrate by his verbal order, or by an order in writing, shall cause the person to be brought before him.

Manner of con-  
ducting examina-  
tion  
R. S. 185, § 12.  
11 Gray, 67.  
7 Allen, 588.

SECT. 20. The magistrate before whom the person is brought, shall be in charge of having committed an order on the complaint and the witnesses to appear at the time and place named in the order, in the presence of the party charged, in such charge which may be deemed

SECT. 21. After the testimony to support the prosecution, the witnesses for the prisoner, if he has any, shall be sworn and examined, and he may be assisted by counsel in such examination, and in the cross-examination of the witnesses in support of the prosecution.

Examination on part of prisoner. R. S. 135, § 13.

SECT. 22. The magistrate may at his discretion, while examining a witness, exclude from the place of examination all the other witnesses, and may if requested, or if he see cause, direct the witnesses, for or against the prisoner, to be kept separate so that they cannot converse with each other until they have been examined.

Witnesses may be kept separate, &c. R. S. 135, § 14.

SECT. 23. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he deems it necessary, and shall if required by the magistrate be signed by the witnesses.

Testimony reduced to writing, &c. R. S. 135, § 15.

SECT. 24. If it appears to the magistrate, upon the whole examination, that no offence has been committed, or that there is not probable cause for charging the prisoner with the offence, he shall be discharged.

Prisoner when to be discharged; R. S. 135, § 16.

SECT. 25. If it appears that an offence has been committed and that there is probable cause to believe the prisoner guilty, and if the offence is bailable by the magistrate and the prisoner offers sufficient bail, it shall be taken and the prisoner discharged; but if no sufficient bail is offered, or the offence is not bailable by the magistrate, the prisoner shall be committed to prison for trial.

when to be bailed or committed. R. S. 135, § 17.

SECT. 26. When the prisoner is admitted to bail or committed, the magistrate shall bind by recognizance such witnesses against the prisoner as he deems material, to appear and testify at the next court having cognizance of the offence, and in which the prisoner shall be held to answer.

Witnesses to recognize; R. S. 135, § 18. See 1868, 69. 1872, 214.

SECT. 27. If the magistrate is satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security is given, he may order the witness to enter into a recognizance with such sureties as may be deemed necessary for his appearance at court.

may be required to give sureties. R. S. 135, § 19.

SECT. 28. When a married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness; or the magistrate may in his discretion take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law notwithstanding the coverture or minority.

Recognizances by married women and minors. R. S. 135, § 20.

SECT. 29. Witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order or are otherwise discharged according to law.

Witnesses refusing, shall be committed. R. S. 135, § 21. See 1872, 214.

SECT. 30. If it appears to the magistrate that a witness is unable to procure sureties when so ordered, he may with the consent of the defendant take, or cause to be taken by any magistrate authorized to take depositions in civil cases, the deposition of such witness in manner and form as is provided in civil cases, and the witness shall thereupon be discharged. The attorney for the commonwealth who will have charge of the case at the trial shall be notified of the time and place of taking the same, as parties are required to be notified; and the assent of the defendant shall be indorsed on the deposition. The fees shall be the same as in civil cases, and shall be taxed in the bill of costs. The provisions of this section shall not apply to the prosecutor in the case, or to any accomplice in the commission of the offence charged in the complaint.

Depositions of witnesses may be taken in certain cases. Proceedings; 1861, 71, §§ 1, 2.

SECT. 31. The deposition shall be seasonably transmitted to the court at which the witness was ordered to appear; and if he is unable to attend at the time of the trial, by reason of his death, insanity, sickness,

to be returned to court, &c. 1861, 71, § 2.

or any infirmity, or of his being absent from the state so that he cannot be compelled to attend by subpoena or attachment, the deposition may be read in evidence on the trial by either party, subject to all legal objections.

Magistrate may have associates. Fees in such cases.  
R. S. 135, § 23.

SECT. 32. A magistrate to whom complaint is made, or before whom a prisoner is brought, may associate with himself one or more of the magistrates of the same county, and they may together execute the powers and duties given to magistrates by this chapter; but no fees shall be taxed for such associates.

Commitments, when to be superseded, and recognizances discharged.  
R. S. 135, § 25.  
1846, 198.  
See Ch. 171, § 28.  
22 Allen, 402.

SECT. 33. When a person is committed to prison or under recognizance to answer to a charge of assault and battery or other misdemeanor for which the party injured may have a remedy by civil action, (except where the offence was committed by or upon a sheriff or other officer of justice, or riotously or with intent to commit a felony, or is punishable by imprisonment in the state prison,) if the party injured appears before the magistrate who made the commitment or took the recognizance, and acknowledges in writing that he has received satisfaction for the injury, the magistrate may in his discretion, on the payment of all the costs which have accrued, by an order under his hand discharge the recognizance or supersede the commitment, and may also discharge all recognizances and supersede the commitment of all witnesses in the case.

Orders therefor, how to be filed and effect thereof.  
R. S. 135, § 26.  
12 Allen, 402.

SECT. 34. Every such order discharging the recognizance of the party or witnesses, shall be filed in the office of the clerk before the sitting of the court at which they are bound to appear; and every order superseding the commitment of the party charged, or of any witness, shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action for such injury.

Prisoners, how bailed if arrested after court adjourns;  
1845, 165, § 1.

1874, 306§3

SECT. 35. When a person under indictment for a bailable offence is arrested after the adjournment of the court in which the same is triable, any justice of the court, or any standing or special commissioner appointed for such purpose by the court, may fix the amount of and receive bail in the same manner as the court might do.

when committed.

R. S. 135, § 22.  
1851, 92, § 2.  
1855, 265, § 1.  
1859, 196.  
8 Greenl. 179.  
See 1862, 159.  
1870, 269, § 9.  
5 Allen, 499.  
9 Allen, 371.  
12 Allen, 201.  
105 Mass. 585.

SECT. 36. A justice of the supreme judicial court, superior court, or a standing or special commissioner appointed by either of said courts, or a justice of a police court or two justices of the peace and of the quorum in any county, on application, whether on a warrant, may receive and admit such prisoner to peace may respectively admitting sufficient sureties to receive him.

not to be bailed without notice, &c.  
R. S. 135, § 22.  
1851, 92, § 2.  
1855, 265, § 1.

SECT. 37. If the person amount of the recognizance preceding section until released by whom he was committed not be admitted to bail by the peace, for a less amount

when bailed on Lord's day.  
1855, 265, § 2.

SECT. 38. Persons committed on evening or afternoon preceded when in the opinion of the appears to be proper.

Condition of recognizances.  
1845, 165, § 2.  
12 Allen, 201.

SECT. 39. When a court son, either with or without be held by any police justice to answer to a charge against exceptions, the condition shall appear at the time or term



term to which the case may be continued, (if not previously surrendered or discharged,) and so from time to time or term to term, until the final decree, sentence, or order, of the court thereon, and to abide such final sentence, order, or decree, and not depart without leave.

SECT. 40. All recognizances and examinations taken by a magistrate under the provisions of this chapter, shall be certified and returned by him to the district-attorney or the clerk of the court before which the party charged is bound to appear, on or before the first day of the sitting thereof; and if such magistrate refuses or neglects to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment as for a contempt.

Recognizances and examinations to be returned to court.  
R. S. 135, § 24.  
9 Allen, 371.

SECT. 41. (R.) [Bail in criminal cases, at any time before the commencement of an action of *scire facias* on the recognizance, may exonerate themselves by surrendering their principal to the jailer in the county where the offence was committed or is punishable, and delivering to him a certified copy of the recognizance; and the principal shall be received and detained by the jailer, and may be again bailed, in the same manner as if committed for not finding sureties to recognize for him.]

Bail may exonerate themselves, &c.;  
1861, 92, §§ 1, 2.  
1859, 131.  
(R.) Repealed  
1862, 169, § 3.  
See 1863, 59.

SECT. 42. (R.) [Bail may also exonerate themselves at any time before final judgment in an action of *scire facias* on the recognizance by surrendering their principal into court; but if such action has been commenced the court may require the bail to pay the whole or any portion of the costs or penalty.]

same subject;  
1859, 131.  
(R.) Repealed  
1862, 169, § 3.

SECT. 43. If by the act of God, or the government of the United States, or any state, or by sentence of law, bail are unable without their fault to surrender their principal, they shall, on motion before final judgment on the *scire facias*, be exonerated and discharged by the court, with or without costs, as the court deems equitable.

same subject;  
1859, 131.

SECT. 44. (R.) [Bail may take and surrender their principal into court or in the manner provided in section forty-one, after final judgment on the *scire facias*, and before or after satisfaction thereof, and may thereupon as of right have a review and rehearing as provided in section fifty to fifty-three inclusive.]

may surrender principal.  
1859, 131.  
(R.) Repealed  
1862, 169, § 3.

SECT. 45. When the principal has been once surrendered and bailed anew, his new bail shall not have the benefit of the provisions of the four preceding sections, nor of section fifty to fifty-three inclusive.

New bail not to have benefit, &c.  
1859, 131.

SECT. 46. When a person under recognizance to appear and answer, or to prosecute an appeal or bill of exceptions, in a criminal prosecution, fails to appear for that purpose according to the condition of his recognizance, and when a person under recognizance to testify in a criminal prosecution fails to perform the condition of his recognizance, his default may be recorded; whereupon the obligation of such person and his sureties shall be deemed forfeited, and process shall be issued against them or such of them as the prosecuting officer directs; but in such suit no costs shall be taxed for travel.

Defaults on forfeited recognizances.  
R. S. 135, § 27.  
1845, 166, § 3.  
See 1862, 169.

SECT. 47. A surety in such recognizance may by leave of the court, after default and either before or after process has been issued against him, pay to the county treasurer or clerk of the court the amount for which he was bound as surety, with such costs as the court shall direct, and be thereupon forever discharged.

Surety may pay amount of recognizances, &c.  
R. S. 135, § 28.

SECT. 48. When an action is brought on behalf of the commonwealth against a principal or surety in a recognizance in a criminal prosecution entered into either by a party or a witness, and the penalty is adjudged forfeited, the court may render judgment for the whole of such penalty with interest, or on application of the defendant, for any part thereof according to the circumstances of the case and the situation of the party, and upon such terms and conditions as the court deems just and reasonable.

Action and judgment on recognizances.  
R. S. 135, § 29.  
1844, 44, § 1.  
14 Mass. 66.

Action on recognizance not to be defeated, &c., for certain irregularities.

R. S. 186, § 80.  
2 Greenl. 62.  
9 Mass. 520.  
12 Mass. 1.  
16 Mass. 447.  
9 Met. 407.  
7 Gray, 318.

Review of judgments on forfeited recognizances; 1852, 128, § 1.

Petition for.  
1852, 128, § 2.

Proceedings when former judgment is diminished; 1852, 128, § 3.

when not diminished, &c.  
1852, 128, § 4.

Offences not bailable.  
1852, 269, § 4.  
See 1871, 61.

SECT. 49. Such action shall not be barred or defeated, nor shall judgment be arrested, by reason of neglect or omission to note or record the default of any principal or surety at the term when it happens, nor by reason of a defect in the form of the recognizance, if it sufficiently appears from the tenor thereof, at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance.

SECT. 50. A court that has rendered judgment on a recognizance the penalty of which is forfeited to the commonwealth, may on the petition of any person interested grant a review and a rehearing of the case upon the surrender or recaption of the prisoner who was enlarged, or for any sufficient cause which has occurred or been ascertained by the person interested after the rendition of such judgment, or at such time as not to have afforded opportunity for presenting the same in evidence.

SECT. 51. The petition, stating the grounds relied upon, shall be filed in court, and notice thereof with a copy given to or served on the attorney for the commonwealth for the county where the court is to sit, fourteen days at least before the term at which such hearing may be had, unless the attorney waives such notice or service.

SECT. 52. If it appears to the court that any part of such preceding judgment has been actually paid to or for the commonwealth upon the recognizance or judgment, and upon such review the court orders the judgment to be reversed or given for a less sum than has been so actually paid, the court may decree a sum equal to the difference between the amount actually paid and the amount so ordered, to be repaid to the party who paid the same or his legal representatives; and the treasurer or other officer of the commonwealth who received or then has the same, shall, on presentation of proper evidence of authority therefor, repay the same accordingly.

SECT. 53. If upon such petition the review is not granted, or the original judgment is not altered, the court may award reasonable costs for the commonwealth against the petitioner.

SECT. 54. The offences of treason, rape, and arson shall not be bailable.

## CHAPTER 171.

### OF INDICTMENTS, PROSECUTIONS, AND PROCEEDINGS BEFORE TRIAL.

#### Sections

- 1, 2. Grand jurors, when and how return term of service.
3. Same subject. Who grand jurors, as jurors for trials.
4. Grand jurors, deficiency in, how supplied.
5. how empanelled and sworn. P. oath;
6. when allowed to affirm.
7. Foreman;
8. duty and term of service of. Foreman tempore.
9. Who may swear witnesses before grand jury. List of witnesses.
10. Grand jury may appoint clerk. His clerk;
11. may be ressumoned at same term.
12. Grand jurors, &c., not to disclose the indictment found;
13. not to testify how members voted, &c.
14. Prisoner not indicted, when to be charged;
15. when discharged as insane, to be sent to hospital.

SECTION	SECTION
29. Prisoner refusing to plead. Need not be asked how he will be tried.	32. Commission to examine witnesses, how granted.
30. When persons in prison under an indictment are to be tried, if they require it.	33. Such commissions, how executed, and depositions, how used.
31. Plea in abatement, when to be verified.	34. Civil remedies not barred by proceedings in criminal cases.

SECTION 1. The clerk of the superior court for each county, not less than seven nor more than thirty days before the commencement of the first term of the court in each year, shall issue writs of *venire facias*, in each county, for twenty-three grand jurors to be returned to that court, who shall be held to serve at each term thereof throughout the year, and until another grand jury is empanelled in their stead: except that in the counties where terms of the court are established for the transaction of criminal business, grand jurors shall be required to attend only at such terms.

SECT. 2. The clerk of the superior court for criminal business, not less than seven nor more than fourteen days before each term commencing on the first Mondays of January and July, shall issue writs of *venire facias* for twenty-three grand jurors to serve in said court, twenty-two of whom shall be drawn and returned from the city of Boston, and one from Chelsea, North Chelsea, or Winthrop, who shall be held to serve for each term thereof for six months and until another grand jury is empanelled in their stead.

SECT. 3. Grand jurors shall be drawn, summoned, and returned, in the same manner as jurors for trials; and when drawn at the same time with jurors for trials, the persons whose names are first drawn, to the number required, shall be returned as grand jurors, and those afterwards drawn shall be jurors for trials.

SECT. 4. In case of deficiency of grand jurors in any court, writs of *venire facias* may be issued to the constables of such cities or towns as the court may direct, to return forthwith such further number of grand jurors as may be required.

SECT. 5. The clerk of the court shall prepare an alphabetical list of the names of all persons returned as grand jurors, and when they are to be empanelled, the two persons first named thereon shall be first called, and the following oath shall be administered to them:—

You, as grand jurors of this inquest for the body of this county of—, do solemnly swear, that you will diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge; the commonwealth's counsel, your fellows, and your own, you shall keep secret; you shall present no man for envy, hatred, or malice, neither shall you leave any man unpresented for love, fear, favor, affection, or hope of reward; but you shall present things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

The other jurors shall then be called in such divisions as the court may deem proper, and the following oath shall be administered to them:—

The same oath which your fellows have taken on their part, you, and each of you, on your behalf, shall well and truly observe and keep; so help you, God.

SECT. 6. When a person returned as grand juror is conscientiously scrupulous of taking the oath before prescribed, he shall be allowed to make affirmation, substituting the word "affirm" instead of the word "swear" and also the words, "this you do under the pains and penalties of perjury," instead of the words, "so help you, God."

SECT. 7. After the grand jurors have been empanelled and received their charge from the court, they shall retire with the officer appointed to attend them, and before proceeding to discharge their duties, elect by ballot one of their number to be foreman, and give notice thereof to the court, and the clerk shall record the same.

SECT. 8. The foreman elected at the first term shall be foreman for

Grand jurors;  
R. S. 136, § 1.  
1840, 74.  
See 1860, 148.  
14 Gray, 386.  
101 Mass. 16.

In Suffolk.  
R. S. 86, § 6.  
1844, 44, § 8.  
1846, 127.  
1862, 68.  
See 1860, 148.

Same subject.  
Who grand jurors, and who jurors for trials.  
R. S. 136, § 8.  
See Ch. 182.

Grand jurors, deficiency in, how supplied;  
R. S. 136, § 4.

how empanelled and sworn;  
R. S. 136, § 5.

form of oath;

when allowed to affirm.  
R. S. 136, § 6.

Foreman;  
R. S. 136, § 7.

duty and

116m. 61

term of service of  
Foreman pro  
tempore.  
R. S. 136, § 8.

Who may swear  
witnesses before  
the grand jury.  
List of witnesses.  
R. S. 136, § 9.  
4 Gray, 5.

Grand jury may  
appoint clerk.  
Minutes of clerk;  
R. S. 136, § 10.

may be resum-  
moned at same  
term.  
R. S. 136, § 11.

Grand jurors,  
&c., not to dis-  
close fact of in-  
dictment found;  
R. S. 136, § 12.

not to testify  
how members  
voted, &c.  
R. S. 136, § 13.  
11 Cush. 187.  
12 Gray, 167.

Prisoner not in-  
dicted, when to  
be discharged;  
R. S. 136, § 14.

discharged as  
insane, &c.  
R. S. 136, § 15.  
1853, 318, § 1.  
1860, 247, § 8.  
See Ch. 73, § 8.

(R.) Repeat and  
substitute.  
1862, 223, §§ 17,  
18.

Special acts, &c.,  
need not be set  
out in complaint,  
&c.  
1838, 181, § 4.  
1846, 62.  
1846, 96, § 15.  
3 Pick. 462.

Offences commit-  
ted near county  
lines, and on the  
sea.  
R. S. 138, § 7.  
2 Allen, 502.

Indictment  
where injury is in  
one county and  
death in another;  
R. S. 138, § 8.  
101 Mass. 10.

for offences  
committed at sea,  
or out of state,  
&c.  
101 Mass. 1.

the whole period they are required to serve, but in his absence another foreman shall be elected in the same manner, who shall perform the duties during such absence, and in case of the death of the foreman, for the residue of their term of service.

SECT. 9. The foreman of the grand jury, or the prosecuting officer before them, may administer oaths and affirmations in the manner prescribed by law, to witnesses who appear to testify before the jury, and the foreman shall under his hand return to the court a list of all witnesses sworn before the grand jury during the term, which shall be filed of record by the clerk.

SECT. 10. The grand jury may appoint one of their number to be clerk, to preserve minutes of the proceedings before them, which minutes when the jury so direct shall be delivered to the attorney-general or district-attorney.

SECT. 11. When the grand jury are dismissed before the court is adjourned without day, they may be summoned to attend again in the same term, at such time as the court directs for the despatch of any business that may come before them.

SECT. 12. No grand juror or officer of the court shall disclose the fact that an indictment for felony has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on the indictment.

SECT. 13. No grand juror shall be allowed to state or testify in any court, in what manner he or any other member of the jury voted on any question before them, or what opinion was expressed by any juror in relation to such question; and in charging the grand jury, the court shall remind them of the provisions of this and the preceding sections.

SECT. 14. Any person held in prison on a charge of having committed a crime, shall be discharged if he is not indicted before the end of the second term of the court at which he is held to answer, unless it appears to the satisfaction of the court that the witnesses on the part of the government have been enticed or kept away, or are detained and prevented from attending the court by sickness or some inevitable accident, and except in the case provided for in the following section.

SECT. 15. (R.) [When a person held in prison on a charge of having committed an indictable offence is not indicted by the grand jury by reason of insanity, they shall certify the fact to the court, and thereupon, if his discharge or going at large is deemed manifestly dangerous to the peace and safety of the community, the court may order him to be committed to one of the state lunatic hospitals; otherwise he shall be discharged.]

SECT. 16. In a complaint, prosecution, or other process, founded on a special act of the legislature an ordinance or by-law of any city or town, or an order of set forth the offence fit part of such law, ordin

SECT. 17. An offence or within one hundred alleged in the indictment and punished, in sea within one league the adjacent county.

SECT. 18. If a mortal wound is inflicted, or poison is death ensues in another county, or death ensues in either county.

SECT. 19. If a mortal wound is inflicted, or poison is death ensues in either county.

ensues in any county thereof, such offence may be prosecuted and punished in the county where the death happens. R. S. 138, § 9.

SECT. 20. An indictment for the crime of murder may be found at any period after the death of the person alleged to have been murdered; all other indictments shall be found and filed within six years after the commission of the offence; but any period during which the party charged was not usually and publicly resident within this state, shall not be reckoned as part of the six years. Limitation of criminal prosecutions. R. S. 138, § 16. See Ch. 63, § 99. Ch. 83, § 3. Ch. 84, § 9; 183, § 22; 185, §§ 2, 20, 25. See 1867, 164.

SECT. 21. If the grand jury find and return to the court an indictment for a crime punishable with death, process shall be forthwith issued for the arrest of the party charged, if he is not already in custody. Indictment for a capital offence; R. S. 82, § 27. R. S. 136, § 17. 1844, 44, § 4.

SECT. 22. (R.) [As soon as may be after the finding of such indictment, the party charged, when in custody, shall be served with a copy thereof by the sheriff or his deputy, with an order of the court notifying him, if the indictment is found in the county of Dukes County, that the indictment will be entered at the supreme judicial court next to be held in the county of Barnstable, and if found in any other county, at the term of said court next to be held for the same county, or in either case at any intermediate time before the next term of the court, when the court may be in session in the county.] copy of, to be served; R. S. 81, § 46. R. S. 82, § 26. R. S. 136, §§ 18, 19. 1844, 44, § 4. 5 Cush. 397. See Ch. 112, § 9, 20-25.

SECT. 23. (R.) [The clerk of the superior court, when such an indictment is found, shall forthwith give notice thereof to the chief or first justice of the supreme judicial court, and shall transmit the indictment to said court, at the next term or any intermediate time, as mentioned in the preceding section, where it shall be entered. The supreme judicial court shall have cognizance and jurisdiction thereof, and proceedings shall be had thereon, in the same manner as if the indictment had been found in that court.] (R.) Repeat and substitute. 1869, 438. notice of, to chief justice of S. J. C.; R. S. 82, § 26. R. S. 136, §§ 18, 20. 1844, 44, § 4. 1859, 196. 5 Cush. 397.

SECT. 24. Any prisoner indicted for a crime punishable with death, or imprisonment for life in the state prison, shall, on demand upon the clerk by himself or his counsel, have a list of the jurors returned delivered to him, and shall also have process to summon such witnesses as are necessary to his defence, at the expense of the commonwealth. (R.) Repeat and substitute. 1869, 433. prisoner to have copy of, &c. R. S. 136, § 23. 1859, 196, § 21. 13 Mass. 501. 104 Mass. 538.

SECT. 25. Every person indicted for an offence for which he may be imprisoned in the state prison, if he is under recognizance or in custody to answer for such offence, shall be entitled to a copy of the indictment and all indorsements thereon, without paying fees therefor. What other prisoners entitled to copy of indictment. R. S. 136, § 24.

SECT. 26. The attorney-general and other prosecuting officers may in all cases issue subpoenas for witnesses to appear and testify on behalf of the commonwealth, and the subpoena, under the hand of such officer, shall have the same force, and be obeyed in the same manner, and under the same penalties in case of default, as if issued by the clerk. Prosecuting officers may issue subpoenas. R. S. 136, § 25.

SECT. 27. Witnesses summoned in behalf of the commonwealth shall be bound to attend without the payment of fees, and shall be punishable for non-attendance; but if they satisfy the court of their inability to defray their expenses, the court shall order their fees which have accrued to be paid, and may make such further order for the payment of their fees as may be deemed reasonable. The court may at each term pass a general order for the payment of the fees of such witnesses. Witnesses for state not entitled to fees in advance, &c. Payment of witness fees. R. S. 136, § 26. 1859, 62.

SECT. 28. When an indictment is found against a person for an assault and battery or other misdemeanor for which the party injured may have a remedy by civil action, except where the offence was committed by or upon a sheriff or other officer of justice, or riotously, or with intent to commit a felony, or is punishable by imprisonment in the state prison, if the party injured appears in court where the indictment is pending, and acknowledges satisfaction for the injury sustained, the court may, on payment of the costs accrued, order all further pro- What criminal prosecutions may be stayed upon reparation to party injured. R. S. 136, § 27. 1844, 196. See Ch. 170, § 83. 115 M. 133

Prisoner refusing to plead. Need not be asked how he will be tried; R. S. 136, §§ 28, 29. 10 Met. 222. 12 Allen, 155. 13 Allen, 568.

when to be tried. R. S. 136, § 80. 15 Mass. 217.

109 M. 340

Plea in abatement, when to be verified. R. S. 136, § 81.

Commission to examine witnesses, how granted R. S. 136, § 82. 5 Met. 421.

Such commissions, how executed, and depositions, how used. R. S. 136, § 83.

Civil remedies not barred by proceedings in criminal cases. 1861, 151, § 6. 1866, 128, § 8.

ceedings to be stayed, and discharge the defendant from the indictment, which shall forever bar all remedy for such injury by civil action.

SECT. 29. If on arraignment a person refuses to plead or answer, or does not confess the indictment to be true, the court shall order a plea of not guilty to be entered, and thereupon the proceedings shall be the same as if he had pleaded not guilty. It shall not be necessary in any case to ask a prisoner how he will be tried.

SECT. 30. Every person held in prison upon an indictment shall, if he requires it, be tried at the next term of the court after the expiration of six months from the time when he was imprisoned, or shall be bailed upon his own recognizance, unless it appears to the satisfaction of the court that the witnesses on behalf of the government have been enticed or kept away, or are detained and prevented from attending the court by sickness or some inevitable accident.

SECT. 31. When to an indictment a plea in abatement or other dilatory plea is offered, the court may refuse to receive such plea, until its truth is proved by affidavit or other evidence.

SECT. 32. When upon an indictment an issue of fact is joined, the court may, on application of the defendant, grant a commission to examine any material witnesses residing out of this state, in the same manner as in civil causes; the prosecuting officer may if he sees fit join in such commission, and name any material witnesses to be examined on the part of the commonwealth.

SECT. 33. When such commission is issued, the interrogatories to be annexed thereto shall be settled, and the commission executed and returned, in the manner prescribed by law in relation to commissions in civil cases, and the depositions taken thereon and returned shall be read in the same cases, with the like effect and subject to the same exceptions, as in civil cases: *provided*, that when the defendant declines to use on his trial the deposition so taken, the prosecuting officer shall not make use of any deposition taken on the part of the commonwealth, without the defendant's consent.

SECT. 34. No proceedings against a person for a criminal offence shall prevent or bar any civil action which might otherwise be maintained by a party aggrieved by the commission of the offence.

## CHAI

11

0

### Section

1. Issues of fact in indictments, how tried.
2. No grand jury to be on trial jury.
3. Challenges by defendants, attorney-general, &c.
4. peremptory, when allowed.
5. What opinions disqualify jurors in cases.
6. Oaths of jurors. Forms of oaths.
7. Affirmation of jurors.
8. When defendant is to be present at trial.
9. Court may order view.
10. Defendant relying upon license, must show the same.
11. Defence in cases of libel.

Issues of fact, how tried. R. S. 137, § 1. 12 Allen, 155.

SECTION 1. Issues of fact joined by a jury drawn and returned in trial of issues of fact in civil causes.

SECT. 2. No member of the grand jury which has found an indictment shall be put upon the jury for the trial thereof.

SECT. 3. Every person indicted for an offence, and the attorney-general, or other officer prosecuting an indictment on behalf of the commonwealth, shall, when the jury is empanelled for the trial, be entitled to the challenges allowed by law to parties in civil causes.

SECT. 4. A person put on trial for an offence punishable with death, or imprisonment for life in the state prison, shall be allowed to challenge peremptorily twenty of the persons returned as jurors, and no more.

SECT. 5. No person whose opinions are such as to preclude him from finding a defendant guilty of an offence punishable with death, shall be compelled or allowed to serve as a juror on the trial of an indictment for such offence.

SECT. 6. The following oath shall be administered to the jurors for the trial of all criminal cases not capital:—

You shall well and truly try the issue between the commonwealth and the defendant, (or the defendants, as the case may be,) according to your evidence; so help you, God.

In capital cases the following oath shall be administered to the jurors:—

You shall well and truly try, and true deliverance make, between the commonwealth and the prisoner at the bar, whom you shall have in charge, according to your evidence; so help you, God.

SECT. 7. A juror who is conscientiously scrupulous of taking either of the oaths above prescribed, shall be allowed to make affirmation, substituting the words, "this you do under the pains and penalties of perjury," instead of the words, "so help you, God."

SECT. 8. No person indicted for a felony shall be tried unless personally present during the trial; persons indicted for smaller offences may at their own request, by leave of the court, be put on trial in their absence, by an attorney duly authorized for that purpose.

SECT. 9. The court may order a view by a jury empanelled to try a criminal case.

SECT. 10. (R.) [In all criminal prosecutions in which the defendant relies for his justification upon any written license, appointment, or certificate of authority, he shall prove the same, and until such proof, the presumption shall be that he is not so authorized.]

10 Cush. 68. 12 Cush. 502. 8 Gray, 459. 9 Gray, 137. 13 Gray, 78. 2 Allen, 292. 7 Allen, 380.

SECT. 11. In a prosecution for writing or publishing a libel, the defendant may give in evidence in his defence upon the trial, the truth of the matter contained in the publication charged as libellous, and such evidence shall be deemed a sufficient justification, unless malicious intention is proved.

SECT. 12. In the prosecution of offences in relation to or affecting real or personal estate, it shall be sufficient, and shall not be deemed a variance, if it is proved on the trial, that at the time when the offence was committed, either the actual or constructive possession, or the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged to be the owner thereof.

103 Mass. 425, 435. 104 Mass. 552.

SECT. 13. When an offence is alleged to have been committed in the night time, the time called night time shall be deemed to be the time between one hour after the sun-setting on one day and one hour before sun-rising on the next day; and in all cases the time of sun-setting and sun-rising shall be ascertained according to mean time in the place where the offence is committed.

SECT. 14. When a person indicted is at the time appointed for the trial found to the satisfaction of the court to be insane, the court may cause him to be removed to one of the state lunatic hospitals for such a term and under such limitations as they may direct.

See 1864, 298, § 10.

No grand juror to be on trial jury.  
R. S. 137, § 2.

Challenges;  
R. S. 137, §§ 3, 4.  
See Ch. 182, § 30.  
See 1862, 64.  
1869, 151.

peremptory, when allowed.  
R. S. 137, § 5.  
1859, 196, § 21.

What opinions disqualify jurors in capital cases.  
R. S. 137, § 6.

Oaths of jurors.  
R. S. 137, § 7.  
See Ch. 182, § 23.  
11 Gray, 4.

Affirmation of jurors.  
R. S. 137, § 8.

When defendant is to be present at trial, &c.  
R. S. 137, § 9.  
1862, 37, § 1.

Court may order view.  
R. S. 137, § 10.

Defendant must prove license.  
1844, 102.  
1859, 160.  
(R.) Repeal and substitute.  
1864, 221.

Defence in cases of libel.  
R. S. 133, § 6.  
1855, 393.  
4 Mass. 168.  
3 Pick. 304.  
9 Met. 410.  
13 Met. 68.

Proof of ownership of property.  
R. S. 123, § 11.

1 Mass. 476.  
14 Mass. 217.  
10 Met. 422.  
9 Gray, 108.  
10 Gray, 469.  
5 Allen, 517.  
11 Allen, 110.

Time included in "night time."  
1847, 13.  
2 Cush. 589.  
1 Gray, 495.

Prisoner found insane to be sent to hospital.  
1849, 68.  
1853, 313.  
1856, 247.  
See Ch. 73, § 8.

Jury may decide the law and the fact, &c.  
1807, 140, § 15.  
1866, 162.  
10 Pick. 496.  
20 Pick. 222.  
10 Met. 203.  
6 Gray, 186.  
See Ch. 112.  
§§ 11, 26, 27.  
9 Gray, 183.  
10 Gray, 4.

Proceedings on conviction of part of offence charged;  
R. S. 187, § 11.  
12 Pick. 607.  
19 Pick. 479.  
1 Met. 262.  
2 Met. 198.  
10 Gray, 11.

on acquittal by reason of insanity.  
R. S. 187, § 12.  
1853, 318, § 1.  
1856, 247, § 8.  
7 Gray, 684.  
(R.) Repealed  
1862, 223, § 18.  
Persons acquitted, &c., not liable for fees, &c.  
R. S. 187, § 12.

Certain defects of form not to vitiate indictments.  
R. S. 187, § 14.  
1858, 23.  
6 Greenl. 148.  
2 Mass. 116.  
7 Mass. 9.  
11 Mass. 279.  
5 Pick. 44.  
4 Cush. 141.  
11 Cush. 547.  
See 1864, 250.

Prosecutions under by-laws may be discontinued by order of selectmen, &c.  
1853, 179, § 2.  
106 Mass. 290.

SECT. 15. The jury shall try, according to established forms and principles of law, all criminal causes committed to them, and after having received the instructions of the court, shall decide, in their discretion, by a general verdict, both the fact and the law involved in the issue, or may at their election find a special verdict. The court shall superintend the course of the trials, decide upon the admission and rejection of evidence, and upon all questions of law raised during the trials, and upon all collateral and incidental proceedings, and shall also charge the jury.

11 Gray, 4.

12 Gray, 29.

6 Allen, 448.

9 Allen, 278.

SECT. 16. When a person indicted for a felony is on trial acquitted by the verdict of part of the offence charged, and convicted of the residue, such verdict may be received and recorded by the court, and thereupon the person indicted shall be adjudged guilty of the offence, if any, which appears to the court to be substantially charged by the residue of the indictment, and shall be sentenced and punished accordingly.

2 Allen, 168.

97 Mass. 69.

102 Mass. 162.

106 Mass. 59.

SECT. 17. (R.) [When a person indicted for an offence is on trial acquitted by the jury, by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause, and thereupon if his discharge or going at large is deemed manifestly dangerous to the peace and safety of the community, the court may order him to be committed to one of the state lunatic hospitals; otherwise he shall be discharged.]

SECT. 18. No prisoner or person under recognizance, who is acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees of office, or for any charge for subsistence while he was in custody.

SECT. 19. No indictment, and no complaint before a justice of the peace or police court, shall be quashed or deemed invalid, nor shall the judgment or proceedings thereon be arrested or affected, by reason of the omission or misstatement of the title, occupation, estate, or degree, of the defendant, or of the name of the city, town, county, or place, of his residence; nor by reason of the omission of the words "force and arms," or the words "against the peace," nor by reason of omitting to charge any offence to have been committed contrary to the form of the statute or statutes: *provided*, that such omission or misstatement does not tend to the prejudice of the defendant.

SECT. 20. In all prosecutions before a police court or justice of the peace, under the by-laws of a city or town, the city solicitor, or other person appointed by the board of aldermen or selectmen of such city or town, may enter a *nolle prosequi*, or do any other matter or thing which may be done by a district-attorney in criminal prosecutions.

## CH.

### OF APPEALS, I

#### APPEALS.

##### SECTION

1. Appeal from conviction before justices &c.
2. Witnesses to be recognized, &c.
3. Justice's duty, &c. Fees, how paid.
4. Appellant not required to advance fee.
5. If appeal not prosecuted, appellant sentenced.
6. When on a forfeited recognizance a accrues to a person, it may be awarded court.



APPEALS. 1874, 33, 1876 c. 85 § 5

SECTION 1. Every person convicted of an offence before a justice of the peace or police court, may appeal from the sentence to the superior court then next to be held in the same county. The appellant shall be committed to abide the sentence of said court until he recognizes to the commonwealth in such reasonable sum and with such sureties as the justice or court requires, with condition to appear at the court appealed to, and at any subsequent term to which the case is continued, if not previously surrendered and discharged, and so from term to term, until the final decree, sentence, or order of the court thereon, and to abide such final sentence, order, or decree, and not depart without leave, and in the mean time to keep the peace and be of good behavior.

SECT. 2. On such appeal the justice or court shall have the same authority to bind by recognizances witnesses in the case, as they have by chapter one hundred and seventy when a prisoner is admitted to bail or committed.

SECT. 3. The justice or court shall on such appeal make a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance, if any is taken, to the clerk of the court appealed to. The fees of the justice therefor shall be paid from the county treasury in like manner as other costs in criminal prosecutions.

SECT. 4. The appellant shall not be required to advance any fees upon claiming his appeal, nor in prosecuting the same, but if convicted in the court appealed to, or if sentenced for failing to prosecute his appeal, he may be required, as part of his sentence, to pay the whole or any part of the costs of prosecution.

SECT. 5. If the appellant fails to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the superior court may award sentence against him for the offence whereof he was convicted, in like manner as if he had been convicted in that court; and if he is not then in custody, process may be issued to bring him into court to receive sentence.

SECT. 6. When upon suit brought on a recognizance to prosecute an appeal, the penalty is adjudged to be forfeited, or when, by leave of court, such penalty has been paid to the county treasurer or the clerk of the court without a suit, or before judgment is given as provided in chapter one hundred and seventy, if by law any forfeiture accrues to a person by reason of the offence of which the appellant was convicted, the court may award to him such sum as he may be entitled to out of the forfeiture.

## NEW TRIALS.

SECT. 7. The supreme judicial court and superior court may at the term in which the trial of any indictment is had, or within one year thereafter, on the petition or motion in writing of the defendant, grant a new trial for any cause for which by law a new trial may be granted; or when it appears to the court that justice has not been done; and on such terms or conditions as the court shall direct.

## REPORTS.

SECT. 8. If, upon the trial of a person convicted in the superior court, any question of law arises which, in the opinion of the presiding judge, is so important or so doubtful as to require the decision of the supreme judicial court, he shall, if the defendant desires it or consents thereto, report the case, so far as may be necessary to present the question of law arising therein; and thereupon all further proceedings in that court shall be stayed.

Appeal from conviction before justices of peace, &c.

R. S. 85, § 28.

R. S. 86.

R. S. 87, § 36.

R. S. 138, § 1.

1845, 196, § 2.

1849, 31.

1859, 196.

8 Gray, 476.

6 Gray, 342.

7 Gray, 317.

11 Gray, 465.

106 Mass. 184.

Witnesses to be

recognized, &c.

1856, 130.

Justice's duty,

&c.

Fees, how paid.

R. S. 138, § 2.

2 Met. 18.

8 Gray, 482.

11 Gray, 72, 313.

315. 117 m. 150

Appellant not

required to advance

fees, &c.

R. S. 138, § 3.

If appeal not

prosecuted, ap-

pellant to be

sentenced.

R. S. 138, § 4.

1859, 196.

10 Gray, 468.

108 m. 5

109 m. 361

When on forfeit-

ed recognizance

penalty accrues

to a person, it

may be awarded

by court.

R. S. 138, § 5.

New trials, how

granted, &c.

R. S. 82, § 30.

R. S. 86, § 11.

R. S. 138, § 11.

1855, 152.

1859, 196.

1 Met. 428.

111 m. 439

Reports of cases

by judge.

R. S. 138, § 12.

1859, 196.

12 Cush. 270.

106 Mass. 468.

Person to recognize;  
R. S. 138, § 13.  
10 Gray, 468.  
11 Gray, 280.  
11 Allen, 488.

If he does not,  
to remain in  
prison until, &c.  
Proceedings in  
such case.  
Party may have  
his writ of error.  
R. S. 138, § 14.  
1859, 196.  
7 Gray, 317.

SECT. 9. Any person for whose benefit a report is made as is provided in the preceding section, or who files exceptions, may recognize to the commonwealth in such sum as the court shall order, with sufficient sureties, for his personal appearance at the supreme judicial court next to be held for the same county, and to enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the mean time to keep the peace and be of good behavior.

SECT. 10. If such person does not so recognize, he shall be committed to prison to await the decision of the supreme judicial court; and in that case, the clerk of the court in which the conviction was had shall file a certified copy of the record and proceedings in the case, in the supreme judicial court. The court shall have cognizance thereof and consider and decide the cause in the same manner as it decides questions of law reserved by one of the justices of that court, shall render such judgment, and award such sentence, or make such order thereon, as law and justice require; and a new trial may be ordered at the bar of the supreme judicial court, or the cause may be remanded to the superior court for a new trial there, as the justices of the supreme judicial court shall direct. But the proceedings herein prescribed shall not deprive any party of his writ of error for any error or defect appearing of record.

## CHAPTER 174.

### OF JUDGMENT AND EXECUTION.

[See 1864, 260, §§ 3, 4; 1865, 206; 1866, 230; 1870, 370, § 4.]

#### SECTION

1. Sentence where no punishment is provided;
2. to imprisonment for assaults, &c., may be with costs.
3. Person convicted under chapter eighty-six to pay costs.
- 4, 5. Courts may sentence to jail or house of correction.
- 6, 7. Conditional sentences.
8. Court may impose fine or imprisonment, except, &c.
9. Magistrate to certify if convict is unable to pay fine, &c.
10. Sureties for peace may be required in certain cases.
11. Proceedings on forfeiture of recognisance.
12. Sentence of female convicts with infants;
13. of boys under sixteen;
14. of females;
15. of juvenile offenders;
16. convicts not before sentenced.
17. No sentence to state prison for less than one year.

#### SECTION

18. Solitary imprisonment to precede hard labor, unless, &c.
19. Offices forfeited by commitment to state prison.
20. Sheriff to execute sentences.
21. Removal of convict to state prison.
22. Officer to return precept to magistrate and leave copy with jailer, &c.
23. When convict imprisoned is again sentenced, warrant to be served by keeper where held.
24. Proceedings on conviction of a capital offence;
25. when convict has become insane, or when female convict is quick with child.
- 26, 27. Sentence of death, how executed.
28. Sheriff's return on warrant for execution.
29. Corporations failing to appear may be defaulted, &c.
30. Warrants of distress may be issued.

*Committal for  
non-payment of  
fines & costs  
1874 253.*

Sentence where  
no punishment  
is provided;  
R. S. 138, § 1.  
23 Pick. 280.  
2 Met. 411.  
13 Allen, 581.  
to imprison-  
ment for assaults,  
&c., may be with  
costs.  
1864, 328, § 2.

Person convicted  
under chapter 86  
to pay costs.  
1866, 216.  
Courts may sen-

SECTION 1. In cases of legal conviction, where no punishment is provided by statute, the court shall award such sentence as is conformable to the common usage and practice in this state, according to the nature of the offence, and not repugnant to the constitution.

SECT. 2. Whoever is sentenced to imprisonment for any offence mentioned in section thirty-eight of chapter one hundred and twenty, may in addition to the imprisonment be sentenced to pay the costs of prosecution.

SECT. 3. Whoever is convicted of an offence under the provisions of chapter eighty-six shall be sentenced to pay the costs of prosecution.

SECT. 4. Whoever is convicted of an offence punishable wholly or in part by imprisonment in the jail, may be sentenced to suffer such

imprisonment in the house of correction instead of the jail, or to suffer solitary imprisonment and be confined at hard labor either in the jail or house of correction.

2 Met. 419.

4 Met. 261.

See 1870, 370, § 4.

SECT. 5. Whoever is convicted of a crime punishable by fine and liable to imprisonment in the jail for the non-payment of fine and costs of prosecution, may be sentenced to suffer such imprisonment in the house of correction instead of the jail, and confined at hard labor either in the jail or house of correction.

tence to jail or house of correction.  
R. S. 143, § 17.  
Same subject.  
1846, 118.

SECT. 6. When a person is convicted of an offence punishable at the discretion of the court, either by fine or imprisonment in the jail or house of correction, or by fine or imprisonment in the state prison, the court or justice may award against such offender a conditional sentence, and order him to pay a fine with or without the costs of prosecution, within a limited time to be expressed in the sentence, and in default thereof to suffer such imprisonment as is provided by law.

Conditional sentences.  
R. S. 139, § 2.  
23 Pick. 280.  
2 Met. 411, 412.  
5 Met. 580.

SECT. 7. The person against whom any such conditional sentence is awarded shall be forthwith committed to the custody of an officer in court or to the jail, to be detained until the sentence is complied with; and if he does not pay the fine and costs imposed within the time limited, the sheriff shall cause the other part of the sentence to be executed forthwith.

Same subject.  
R. S. 139, § 3.

SECT. 8. When it is provided that an offender shall be punished by imprisonment in the jail and a fine, or by imprisonment in the house of correction and a fine, such offender, unless convicted under chapter eighty-six, may at the discretion of the court be sentenced to be punished by such imprisonment without the fine, or by such fine without the imprisonment.

Court may impose fine or imprisonment, except, &c.  
R. S. 139, § 4.  
1865, 215, § 39.  
See 1866, 280, § 1.

SECT. 9. (R.) [When a person is ordered to be imprisoned for non-payment of a fine, or fine and costs, not exceeding twenty dollars, the court or magistrate ordering such commitment shall inquire as to the ability of the defendant to pay the same, and if it appears that he is unable, it shall be so certified upon the mittimus.]

Magistrate to certify, if convict is unable to pay fine, &c.  
See Ch. 180, § 7.  
(R.) Repealed by  
1866, 44, § 2.

SECT. 10. Every court before which a person is convicted upon an indictment for any offence not punishable with death, or by imprisonment in the state prison, may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he so recognizes.

Sureties for peace may be required, in certain cases.  
R. S. 139, § 6.  
2 Allen, 61.

SECT. 11. Such recognizance shall be filed of record in the superior court, and in case of a breach of the condition, the same proceedings shall be had as are prescribed in chapter one hundred and sixty-nine in relation to recognizances to keep the peace and be of good behavior.

Proceedings on forfeiture of recognizance.  
R. S. 139, § 6.

SECT. 12. When a female with a nursing infant is convicted of an offence punishable by imprisonment in the house of correction, the court or justice before whom the conviction takes place may sentence her to some workhouse or house of industry in the county; and for her support and custody there shall be paid from the county treasury two dollars a week to the town in which the sentence is executed.

Sentence of female convicts with infants;  
1864, 416, §§ 1, 4.  
1866, 40.

SECT. 13. If a boy under the age of sixteen years is convicted of an offence punishable by imprisonment in the state prison, he not having been before sentenced to imprisonment in the state prison in this state, or in any state prison or penitentiary within the United States, the court, if sentence of solitary imprisonment and confinement at hard labor for a term not exceeding three years is awarded against him, shall order such sentence to be executed against him in the jail, and not in the state prison.

of boys under sixteen;  
R. S. 143, § 18.  
2 Met. 419.  
See 1870, 369, § 7.

SECT. 14. When sentence of confinement at hard labor for any term of time is awarded against a female convict of whatever age, the court

of females.  
R. S. 143, § 18.  
12 Cush. 237.

shall order such sentence to be executed either in the house of correction or jail, and not in the state prison.

SECT. 15. Nothing in the General Statutes shall prevent the court from sentencing juvenile convicts to confinement in any place in which they may be by law confined.

SECT. 16. (R.) [When the punishment of solitary imprisonment and confinement at hard labor for a term not exceeding three years is awarded by the court against a convict who has not been before sentenced to the like punishment by any court in this state or within the United States, such sentence may be executed either in the house of correction, jail, or state prison.]

SECT. 17. Convicts shall not be sentenced to imprisonment in the state prison for a less time than one year.

SECT. 18. When the punishment of imprisonment in the state prison is awarded against a convict, the form of the sentence shall be, that he be punished by confinement at hard labor, and he shall also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such sentence, the solitary imprisonment shall precede the punishment by hard labor, unless the court otherwise order.

SECT. 19. When a convict sentenced by any court of this state or of the United States to imprisonment in the state prison, at the time of conviction and sentence holds an office under the constitution or laws of this state, such office shall be deemed to be vacated from the time of his sentence; and if the judgment against him is reversed upon writ of error, he shall be restored to his office with all its rights and emoluments, but if pardoned, he shall not by reason thereof be restored, unless it is so expressly ordered by the terms of the pardon.

SECT. 20. When a person convicted of an offence is sentenced to pay a fine or costs or be imprisoned in the jail or house of correction, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or to some officer in court, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be a sufficient authority for the sheriff to execute such sentence, and he shall execute it accordingly.

SECT. 21. When a convict is sentenced to imprisonment in the state prison, the clerk of the court shall make out a warrant, under the seal of the court, directed to the warden of the prison, requiring him as soon as may be to cause such convict to be removed from the jail to the state prison; and the clerk shall also annex to the warrant a certified transcript of such conviction and sentence, and a transcript to the sheriff of the county, which shall be transmitted and delivered to the warden, by himself or such person as he may cause the warrant to be duly executed. And unless his term expires before the expiration of a previous term, he shall be ordered to remain in the state prison until the expiration of his term.

SECT. 22. An officer who executes a warrant without charging travel therefor, shall be liable to the cost of the warrant, and shall certify the fees as a condition of commitment the officer shall deliver to the warden of the prison an attested copy of the warrant, which shall be a sufficient warrant for the execution of the sentence.

SECT. 23. When a convict is again sentenced to confinement in the state prison, the warrant for his

Juvenile offenders.  
R. S. 143, § 18.  
1845, 247.  
1852, 258.  
See 1870, 359.

Punishment at hard labor, &c.  
R. S. 143, § 19.  
4 Met. 302, 303.  
(R.) Repeal and substitute.  
1870, 206.

No sentence to state prison for less than one year.  
R. S. 139, § 9.

1876 c 61 Solitary imprisonment to precede hard labor.  
R. S. 139, § 8.  
4 Met. 361.  
8 Met. 539.  
11 Met. 576.  
See 1866, 264.

Offices forfeited by commitment to state prison.  
R. S. 144, § 31.

Sheriff to execute sentences.  
R. S. 139, § 7.

Removal of convict to state prison.  
R. S. 139, § 10.  
1859, 248.  
See Ch. 179, § 24.  
201 Mass. 222.

Officer to return precept to magistrate, and leave copy with jailer, &c.  
1859, 233.  
1861, 116.  
11 Gray, 468.

When convict imprisoned is again sentenced, warrant

sentence shall be placed in the hands of the warden or keeper of the prison in which the convict is held, and it shall be the duty of said warden or keeper, upon the expiration of the first sentence, to commit the convict in obedience to said warrant.

to be served by  
keeper where  
held.

SECT. 24. When a person is convicted of a crime for which sentence of death is awarded against him, the clerk of the court shall as soon as may be deliver to the sheriff of the county a certified copy of the whole record of the conviction and sentence, and the sheriff shall forthwith transmit the same to the governor, and the sentence of death shall not be executed upon such convict until a warrant is issued by the governor, with advice of the council, under the great seal, with a copy of the record thereto annexed, commanding the sheriff to cause execution to be done; and the sheriff shall thereupon cause to be executed on such convict the judgment and sentence of the law.

Proceedings on  
conviction of a  
capital offence.  
R. S. 139, § 11.

1876 c 166 v 1  
Repealed  
1876 c 166 § 7

SECT. 25. If it appears to the satisfaction of the governor and council, that a convict under sentence of death has become insane, the warrant for his execution may be delayed, or if the warrant has been issued, the execution thereof may be respited from time to time, so long as the governor and council think proper. If a female convict under sentence of death is quick with child, the governor and council shall forbear to issue a warrant for her execution, or if such warrant has been issued, the execution thereof shall be respited, until it appears to the satisfaction of the governor and council that she is no longer quick with child.

when convict  
has become in-  
sane, or when  
female convict  
is quick with  
child.

R. S. 139, § 12.

Repealed, 1876, 166 § 7  
1876, 166 § 3

SECT. 26. The punishment of death shall in every case be inflicted by hanging the convict by the neck until he is dead, and the sentence shall, at the time directed by the warrant, be executed within the walls of a prison of the county in which the conviction was had, or within the enclosed yard of the prison.

Sentence of  
death, how  
executed.

R. S. 139, § 13.  
5 Cush. 407.  
11 Cush. 604.

SECT. 27. The sheriff of such county shall be present at the execution, unless he is prevented by sickness or other casualty, and also two of his deputies, to be designated by him, and he shall request the presence of the district-attorney, clerk or clerks of the county courts, and twelve reputable citizens, including a physician or surgeon. He shall permit the counsel of the criminal, such ministers of the gospel as the criminal desires, and his relations, to be present, and also such officers of the prison, deputies, and constables, military guard, or other assistants, as he sees fit.

Same subject.  
R. S. 139, § 14.

SECT. 28. When a sheriff inflicts the punishment of death upon a convict in obedience to a warrant from the governor, he shall as soon as may be make return thereof under his hand, with his doings therein, to the secretary's office. He shall also file in the clerk's office of the court where the conviction was had, an attested copy of the warrant and return; and the clerk shall subjoin a brief abstract of such return to the record of the conviction and sentence.

Sheriff's re-  
turn on war-  
rant for execu-  
tion.

R. S. 139, § 15.

1876, 166 § 2, 6  
Repealed 1876, 166 § 7

SECT. 29. When a corporation indicted under the statutes of this state fails to appear after being duly served with process, its default shall be recorded, the charges in the indictment taken to be true, and judgment shall be rendered accordingly.

Corporations  
failing to ap-  
pear may be  
defaulted, &c.  
1861, 348, § 1.

SECT. 30. When judgment is rendered upon any such indictment against a corporation, the court may issue a warrant of distress to compel the payment of the penalty prescribed by law together with costs and interest.

Warrants of  
distress may be  
issued.

1861, 348, § 2.

## CHAPTER 175.

## OF INQUESTS ON DEAD BODIES.

## SECTION

1. Coroners' inquests, when to be taken.
2. Warrant to constable to summon jury.
3. Penalty on constables or jurors for neglect.
4. Talesmen. Oath, &c., of jurors.
5. Witnesses, how summoned, &c.
6. Inquisition may be secret, and witnesses examined separately.
7. Oath of witnesses.
8. Testimony, how taken, &c.
9. Inquisition, how taken and what to contain.
10. Coroner's duty in case of a murder, &c.

## SECTION

11. Coroner's duty in case of a murder, &c.
12. Compensation of clerk, surgeon, &c.
13. Expenses of bringing to land bodies found in harbors, &c.
14. Coroner, when to bury the body, &c. Expenses, how paid.
15. Expenses, how returned, audited, certified, and paid.
16. Where no coroner, justices of peace to act.
17. Coroners to take charge of money, &c., found on the body.

Inquests, when to be taken.  
R. S. 140, § 1.  
1849, 172, § 1.  
See Ch. 63, § 100.  
See 1864, 28.

Warrant to constable to summon jury.  
R. S. 140, § 2.  
1849, 172, § 1.  
1859, 215.

Form of warrant.

Penalty on constables or jurors for neglect.  
R. S. 140, § 3.  
1852, 312.

Talesmen. Oath, &c., of jurors.  
R. S. 140, § 4.

SECTION 1. Coroners shall, upon being authorized as provided in the following section, take inquests, upon the view of the dead bodies of such persons only as are supposed to have come to their death by violence: *provided*, that in all cases of death by accident upon a railroad an inquest shall be held.

SECT. 2. As soon as a coroner has notice of the dead body of a person found or lying within his county, supposed to have come to his death by violence, he shall repair to the place where the dead body is, and take charge of the same; and if on view of such body, and personal inquiry into the cause and manner of the death, he deems it necessary that an inquest should be taken, he shall, upon being thereto authorized in writing by the attorney-general, or the district-attorney of the district, mayor or chief of police of the city, or selectmen of the town in which such body is found, make his warrant to a constable of the town or city where the dead body is, or to a constable of an adjoining town or city in the county, requiring him forthwith to summon six good and lawful men of the county to appear before such coroner at a time and place expressed in the warrant, which shall be in substance as follows:—

\_\_\_\_\_, ss.  
To either of the constables of \_\_\_\_\_ in the county of \_\_\_\_\_. Greeting.  
In the name of the Commonwealth of Massachusetts, you are hereby required immediately to summon six good and lawful men of the county of \_\_\_\_\_ to appear before me, \_\_\_\_\_, one of the coroners of said county, at the dwelling-house of \_\_\_\_\_, (or at a place called \_\_\_\_\_,) within the town of \_\_\_\_\_, at the hour of \_\_\_\_\_, then and there to inquire, upon the view of the body of \_\_\_\_\_, there lying dead, when, how, and by what means, he came to his death. Hereof fail not.  
Given under my hand the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_. \_\_\_\_\_, Coroner.

SECT. 3. The constable shall forthwith execute the warrant, and at the time mentioned therein shall repair to the place where the dead body is, and make return thereof, and of his doings thereon, under his hand to the coroner. A constable who unnecessarily neglects or fails to execute or return such warrant, shall forfeit ten dollars; and whoever summoned as a juror fails to appear, without reasonable excuse therefor, shall forfeit seven dollars; which forfeitures may be recovered to the use of the county, by an action of tort to be brought by the coroner.

SECT. 4. If the six jurors returned do not all appear, the coroner may require the constable, or any other person whom he appoints, to return jurors from the bystanders to complete the number, but no person shall serve on such jury oftener than once in twelve months. The coroner, in view of the body, shall administer to the jurors thus summoned and returned the following oath:—

You solemnly swear, that you will diligently inquire and true presentment make on behalf of this commonwealth, when, how, and by what means, the person whose

*Murder on Newbury Street*  
1876 & 115

body lies here dead came to his death; and you shall return a true inquest thereof, according to your knowledge and such evidence as shall be laid before you; so help you, God.

SECT. 5. The coroner may issue subpoenas for witnesses, returnable forthwith or at such time and place as he shall therein direct. The persons served with such subpoenas shall be allowed the same fees, and their attendance may be enforced by the coroner in the same manner, and they shall be subject to the same penalties, as if they had been served with a subpoena in behalf of the commonwealth, to attend a justice's court.

Witnesses, how summoned, &c. R. S. 140, § 5.

SECT. 6. The coroner, with the consent of a majority of the jury, may order the inquisition to be secret; in which case he may exclude from the place where the inquisition is taken any or all persons other than those required to be present by the provisions of this chapter; and during the examination of a witness, may exclude from the place of examination all other witnesses, and may also direct the witnesses to be kept separate, so that they cannot converse with each other until they have been examined.

Inquisition may be secret, and witnesses examined separately. 1850, 188, § 1.

SECT. 7. An oath to the following effect shall be administered by the coroner to the witnesses:—

Oath of witnesses. R. S. 140, § 6.

You solemnly swear, that the evidence which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

SECT. 8. The testimony of all witnesses examined before any inquest, shall be reduced to writing by the coroner, or some person by his direction, and subscribed by the witnesses.

Testimony, how taken, &c. R. S. 140, § 7. See § 12.

SECT. 9. The jury, upon the inspection of the dead body, and after hearing the testimony of the witnesses and making all needful inquiries, shall draw up and deliver to the coroner their inquisition under their hands, in which they shall find and certify, when, how, and by what means, the deceased person came to his death, his name if it was known, together with all material circumstances attending his death; and if it appears that he was murdered, the jurors shall further state who were guilty either as principal or accessory, if known, or in any manner the cause of his death; which inquisition may be in substance as follows:—

Inquisition, how taken and what to contain. R. S. 140, § 8.

#### COMMONWEALTH OF MASSACHUSETTS.

ss.  
An inquisition taken at — in the county of —, on the — day of —, in the year —, before —, one of the coroners of said county of —, upon the view of the body of — (or a person) there lying dead, by the oaths of the jurors, whose names are hereunto subscribed, who, being sworn to inquire on behalf of said commonwealth, when, how, and by what means, said — (or person) came to his death, upon their oaths do say, (insert when, how, and by what persons, means, weapon, or instrument, he was killed.) In testimony whereof, said coroner and the jurors of this inquest have hereunto set their hands, the day and year aforesaid.

Form of inquisition.

SECT. 10. If the jury find that a murder, manslaughter, or assault, was committed on the deceased, the coroner shall bind over by recognizance such witnesses as he thinks proper, to appear and testify at the next court to be held in the same county at which an indictment for such offence can be found, and may commit to the jail any witnesses who refuse to recognize in such manner as he directs. He shall return to the same court the inquisition, written evidence, and all recognizances and examinations by him taken.

Coroner's duty in case of a murder, &c. R. S. 140, § 9.

SECT. 11. If a person charged by the inquest with having committed such offence is not in custody, the coroner shall have the same power as a justice of the peace to issue process for his apprehension, and such warrant shall be made returnable before a justice of the peace, or other magistrate or court having cognizance of the case, who shall proceed therein in the manner required of justices of the peace in like cases.

Same subject. R. S. 140, § 10.

SECT. 12. A person who reduces the testimony to writing by direc-

Compensation

of clerk, surgeon, &c.  
1850, 133, § 2.  
1858, 31, § 1.

tion of the coroner pursuant to section eight, shall be allowed for his services such sum as the coroner determines, not exceeding one dollar and fifty cents for each day's actual attendance upon the jury. A surgeon or chemist who aids in the examination on the determination of the coroner that such aid is necessary, shall be entitled to such compensation for his services as the coroner certifies to be just and reasonable, the same being audited and allowed in the manner provided in section fifteen.

Expenses of bringing to land bodies found in harbors, &c.  
1850, 133, § 4.

SECT. 13. When services are rendered in bringing to land the dead body of a person found in any of the harbors, rivers, or waters, of this state, the coroner may allow such compensation for said services as he deems reasonable; but this section shall not entitle any person to allowance for services rendered in searching for such dead body.

Coroner, when to bury the body, &c. Costs, how paid.  
R. S. 140, § 11.  
1858, 31, §§ 1, 2.

SECT. 14. When a coroner takes an inquest upon the view of the dead body of a stranger, or being called for that purpose does not deem it necessary on view of such body that an inquest should be taken, he shall cause the body to be decently buried, unless its dissection has been allowed by lawful authority; and if the coroner certifies that, to the best of his knowledge and belief, the person found dead is a stranger not belonging to this state, the expenses of burial and of the inquisition, if any is taken, and other necessary expenses, with the coroner's fees, shall be paid from the state treasury. In all other cases the expenses of the burial shall be paid by the town or city where the body is found, and all other expenses by the county.

Expenses, how returned, audited, certified, and paid.  
1858, 31, § 1.

SECT. 15. The coroner shall return an account of the expenses of each inquest, or view, including his fees, to the county commissioners having jurisdiction over the place where the inquest or view is held, or in Boston to the city auditor, and shall annex thereto the written authority under which the inquest was held. Such commissioners or auditor shall audit such accounts and certify to the treasurer of the commonwealth, or the treasurer of the county, as the case demands, what items therein are deemed just and reasonable, which shall be paid by said treasurers to the persons entitled to receive the same.

Where no coroner, justices of peace to act.  
1850, 133, § 5.

SECT. 16. When the dead body of a person supposed to have come to his death by violence is found in any town or city in this state in which no coroner duly qualified resides, any justice of the peace, within his county, shall have the like powers, and execute and discharge the same duties as are herein imposed upon coroners, and shall be entitled to the same fees as coroners for like services.

Coroner to take charge of money, &c., found on the body.  
18 Allen, 468.

SECT. 17. In all cases under this chapter, the coroner shall take charge of any money or other personal property of the deceased, found upon or near the body, and deliver the same forthwith to those entitled to its care or possession, but if not claimed within sixty days, then to the public administrator, to be administered upon according to law.

## CHAPTER 176.

### OF FINES, FORFEITURES, AND COSTS.

#### SECTION

1. Fines, &c., to be paid into state treasury.
2. how recovered.
3. Justices of peace to return fines and forfeitures.
4. Two-thirds of criminal costs paid by state; one-third by counties.
5. Duty of justices of peace in taxing costs.

#### SECTION

6. Same subject. Justice may retain his own fees.
7. Costs, how certified by justice on appeal, &c.;
8. in S. J. C. and superior court, how taxed, certified, and returned.
9. Fines, costs, &c., to be paid to sheriff.



SECTION

and by them to be paid to county treasurers.

10. Sheriff suffering escape, to pay fines, &c.

11. Remedy against sheriff for neglecting to pay over fines, &c.

12. Payments to deputy or jailer valid.

SECTION

13. Sheriffs to make semiannual returns. Penalty

14. Semiannual accounts of county treasurers.

15. Treasurers' accounts, how audited, &c.

16. Annual returns of, to governor and council.

17. Costs to be paid by county treasurer if demanded within three years, otherwise, &c.

SECTION 1. All fines and forfeitures recovered in prosecutions of which any part of the costs are paid by the commonwealth, and all fines and forfeitures imposed as a punishment for any offence, or the violation or neglect of any duty imposed by statute, shall, where no other provision is especially made by law, be paid into the treasury of the commonwealth.

2 Allen, 62.

See 1860, 191, §§ 8, 10.

SECT. 2. All fines and forfeitures mentioned in the preceding section, or expressly appropriated to the use of the commonwealth, or any county, city, or town, may, unless otherwise especially provided by law, be prosecuted for and recovered by indictment in the superior court; or when the amount or value thereof does not exceed one hundred dollars, by complaint before a police court, or when it does not exceed fifty dollars, by complaint before a justice of the peace, who shall respectively have such jurisdiction concurrently with the superior court; or the same may be recovered in an action of tort.

SECT. 3. Justices of the peace shall, on or before the fifteenth day of October annually, return to the secretary of the commonwealth a specific account of all fines and forfeitures received by them to the use of the commonwealth or other public authority.

1858, 46.

SECT. 4. Two-thirds of all legal costs and expenses arising in criminal prosecutions, including the fees of grand and traverse jurors for travel and attendance therein, unless paid by the party prosecuted, shall be paid by the commonwealth as hereinafter provided, and the other third by the respective counties in which they occur; but no part of the costs arising under any prosecution for the violation of a by-law of a city or town shall be paid by the commonwealth.

SECT. 5. In criminal prosecutions instituted before justices of the peace, in which a warrant is duly served and returned before them and they render judgment, they shall tax the legal costs arising therein and certify their allowance of the same, and in cases where the warrant is not served, they may allow to the officer and tax and certify such costs as they deem proper.

SECT. 6. In cases in which justices of the peace exercise final jurisdiction in criminal prosecutions, they shall certify the costs by them taxed and allowed, to the next superior court, which taxation shall be examined by the court or its order, the errors therein corrected, and the costs allowed and made up in the general bill of costs for the same term of the court: *provided*, that when a person convicted before a justice of the peace, and sentenced to pay the costs of prosecution, or a fine and costs, complies with the sentence, the costs, or fine and costs, shall be paid to the justice, who may retain his own fees and pay the residue of the costs to the officer and witnesses or other persons entitled thereto; otherwise such costs and the fine shall be paid to the treasurer of the county, city, or town, in the manner directed in chapter one hundred and twenty.

SECT. 7. In criminal prosecutions which are carried to the superior court by appeal, and in cases where a person is bound by recognizance or committed for want of sureties by a justice of the peace or police court, to answer in the superior court, the costs shall be taxed, and certified with the papers to the court, and shall be there allowed and taxed in the costs of prosecution.

SECT. 8. All costs arising in criminal prosecutions in the supreme judicial court, or superior court, shall be taxed by the prosecuting officer;

Fines, &c., to be paid into state treasury;

R. S. 138, § 14.

1839, 186.

1852, 94, § 24

1855, 270, § 6.

4 Cush. 503.

2 Gray, 428.

how recovered.

R. S. 118, § 42.

R. S. 138, § 14.

1852, 812.

1858, 46, §§ 1, 2.

1859, 196.

See 1870, 313, § 2.

Justices of peace to return fines and forfeitures.

1852, 289, § 1.

1857, 40.

Two-thirds of costs paid by state; one-third by counties.

1841, 74, § 1.

1845, 227.

1850, 68.

10 Cush. 495.

See 1861, 191,

§ 10.

Duty of justices of peace in taxing costs.

R. S. 141, § 2.

1850, 107, § 1.

See 1861, 191.

Same subject. Justice may retain his own fees.

R. S. 141, § 8.

1859, 196.

See 1861, 191.

Costs, how certified by justice on appeal, &c.;

R. S. 141, § 4.

1859, 196.

In S. J. C. and superior court, how taxed, cer-

tified, and returned.  
R. S. 141, § 8.  
1843, 61, § 1.  
See 1861, 184.

Fines, costs, &c., to be paid to sheriffs, and by them to county treasurers.  
1857, 107, § 1.  
1859, 196.  
2 Gray, 480.

Sheriff suffering escape to pay fine, &c.  
1857, 107, § 1.

Remedy against sheriff for neglecting to pay over fines, &c.  
1857, 107, § 1.

Payments to deputy or jailer valid.  
1857, 107, § 2.

Sheriffs to make semiannual returns.  
Penalty.  
1857, 107, § 3.

Semiannual accounts of county treasurers  
R. S. 141, § 10.  
1841, 74, § 2.  
1849, 56.  
1859, 258.  
See 1860, 191.  
1861, 184.  
1862, 144.

Treasurers' accounts, how audited, &c.;  
R. S. 141, § 10.  
1849, 56.  
See 1860, 191.

annual re-

and the allowance certified by the clerk, under the direction of the court. The clerks shall make and deliver to the treasurers of the respective counties, cities, or towns, at the end of every term or as soon thereafter as may be, copies of all bills of costs which have been taxed and allowed, and certificates of all fines imposed by the respective courts, to the use of the commonwealth, county, city, or town; and they shall transmit to the treasurer of the commonwealth a certificate of the amount of all such bills of costs, and all sums allowed by the courts as rewards or compensations to prosecutors, with a statement of all fines and forfeitures to the use of the commonwealth imposed or awarded by the court.

SECT. 9. All fines, forfeitures, and costs, imposed or awarded in criminal prosecutions, by the supreme judicial court, or superior court, to the use of the commonwealth or any county, or the city of Boston, and all sums found to be due on forfeited recognizances, shall be certified by the clerks of said courts, under the direction of the court, to the sheriff of the county, who alone is authorized to receive them, and he shall, within one month after the receipt thereof, pay the same without deduction to the county treasurer.

SECT. 10. If a sheriff, having a person in his custody by virtue of the sentence of the court, voluntarily or negligently suffers him to escape, he shall be deemed to have received such fines, forfeitures, forfeited recognizances, and costs, at the time of the escape, and held liable to pay the same, with interest and costs of suit, in like manner as if he had received them.

SECT. 11. If a sheriff neglects to make such payment for thirty days, the county treasurer shall sue for and recover of him, in an action of contract, the amount of such fines, forfeitures, forfeited recognizances, and costs, with interest from the time of receiving the same, at the rate of twelve per cent., and costs of suit.

SECT. 12. Payment to the jailer, or any deputy-sheriff, of any sums mentioned in section nine, shall be deemed a legal and valid payment to the sheriff.

SECT. 13. Every sheriff shall twice in each year, on the first days of January and July, render to the treasurer, to whom said sums are made payable, an account on oath of all sums which he has received during the six months preceding, for fines, forfeitures, forfeited recognizances, and costs, and the names of the persons from whom received, and against whom awarded; and if a sheriff neglects for thirty days to render such account, he shall be liable to a penalty of two hundred dollars, to be sued for and recovered of him in the same manner as is provided in section eleven.

SECT. 14. Every county treasurer shall twice in each year transmit to the auditor of accounts an account upon oath, in which he shall charge the commonwealth with two-thirds and no more of all sums taxed for costs or allowed for rewards or compensations to prosecutors by the courts in his county, and duly certified by the clerk, since the last account rendered by him; and for all such sums, the certificate of the clerk shall be a sufficient voucher. He shall also credit in his account the amount of all fines, forfeitures, and costs, received by him to the use of the commonwealth. If he fails so to present his accounts, he shall forfeit two hundred dollars for every ten days' neglect, to be sued for and recovered by the treasurer in an action of contract.

SECT. 15. His account shall be audited by the auditor of accounts, and he shall forthwith pay over any balance found due to the treasurer of the commonwealth, and if a balance is found in favor of the county treasurer, it shall upon the warrant of the governor be paid from the treasury of the commonwealth.

SECT. 16. He shall annually transmit to the governor and council a

general account, in which he shall credit to the commonwealth all money received by virtue of warrants on the treasury, and all sums received for fines, forfeitures, and costs, with the names of the persons from whom the same are received, and he shall charge all sums actually paid by him on account of the commonwealth, before the time of rendering said account, and the balance shall be credited to the commonwealth in a new account. He shall at the same time transmit to the governor and council a statement of all sums remaining due to any persons on bills of costs or for any other allowance, and certified to him, also a statement of all fines, forfeitures, and costs, remaining due to the commonwealth, together with the names of the persons from whom the same are due.

turns of, to  
governor and  
council.  
R. S. 141, § 11.  
See 1861, 184.

SECT. 17. Each county treasurer shall pay over to the persons entitled thereto all sums taxed for costs in criminal prosecutions, or allowed by the courts as rewards or compensations to prosecutors, and duly certified by the clerks: *provided*, that such sums are demanded within three years after the taxing or allowance thereof; and in his general account transmitted to the governor and council, and also in his account transmitted to the treasurer of the commonwealth next after his general account, as before provided, he shall credit to the commonwealth all such costs and allowances as have not been demanded within said three years, or credited by him in any former account, and also all fees returned to him by justices of the peace and police courts under section fifty-seven of chapter one hundred and twenty; and for neglect to comply herewith he shall be subject to a penalty of five thousand dollars, to be recovered by the treasurer of the commonwealth in an action of contract.

Costs to be paid  
by county treasurer  
if demanded  
within three  
years, otherwise,  
&c.  
R. S. 141, § 12.  
1847, 274, § 2.  
See 1880, 191.

## CHAPTER 177.

### OF FUGITIVES FROM JUSTICE AND PARDONS.

#### FUGITIVES FROM JUSTICE.

##### SECTION

1. Governor may deliver to executive of other states fugitives from justice, and may demand such fugitives from executive of other states.
- 2, 3. Proceedings on such demands from other states.
4. Persons arrested to have opportunity to apply for writ of habeas corpus.
5. Penalty on officer not affording such opportunity.
6. Fees, how paid.
7. Persons liable to be demanded by other states may be arrested, &c.;
8. and required to recognise.

##### SECTION

9. May be committed. Proceedings on default of recognizance, and in capital cases.
10. How proceeded with or discharged.
11. Expenses, how paid.

#### PARDONS.

12. Governor may grant pardons.
13. Terms of pardon, &c., to be set forth in warrant. Bond.
14. Keepers of jails, &c., to arrest convicts at large contrary to terms of pardon, &c.
- 15, 16. Proceedings against convicts charged with violating conditions of pardon, &c.
17. How warrant of pardon executed.

#### FUGITIVES FROM JUSTICE.

SECTION 1. The governor of this state, in any case authorized by the constitution and laws of the United States, may, on demand, deliver over to the executive of any other state or territory any person charged therein with treason, felony, or other crime; or may, on application, appoint an agent to demand of the executive authority of any other state or territory any such offender fleeing from the justice of this state: *provided*, that such demand or application is accompanied by sworn evidence that the party charged is a fugitive from justice, and by a duly attested copy of an indictment, or a duly attested copy of a complaint made before a court or magistrate authorized to receive the same; such

Governor may  
deliver to executive  
of other  
states fugitives  
from justice,  
and may demand  
such fugitives  
from executive of  
other states.  
R. S. 142, § 6.  
1849, 56.  
1859, 81.  
106 Mass. 228.

Proceedings on such demands from other states.  
R. S. 142, § 7.  
5 Met. 548.  
9 Gray, 262.  
106 Mass. 223.

Same subject.  
R. S. 142, § 7.  
5 Met. 548.  
106 Mass. 223.

Persons arrested to have opportunity to apply for writ of habeas corpus.  
1857, 289, § 1.  
100 Mass. 223.

Penalty on officer not affording such opportunity.  
1857, 289, § 2.

Fees, how paid.  
R. S. 142, § 6.

Persons liable to be demanded by other states may be arrested, &c.;  
R. S. 142, § 8.  
5 Met. 538.

and required to recognize, &c.;  
R. S. 142, § 9.

or be committed. Proceedings on default of recognizance, and in capital cases.  
R. S. 142, § 9.

complaint to be accompanied by affidavits to the facts constituting the offence charged, by persons having actual knowledge thereof, and such further evidence in support thereof as the governor may require.

SECT. 2. When such demand or application is made, the attorney-general or other prosecuting officer shall, if the governor requires it, forthwith investigate the grounds thereof, and report to the governor all the material facts which may come to his knowledge, with an abstract of the evidence in the case, and especially in case of a person demanded, whether he is held in custody, or is under recognizance to answer for any offence against the laws of this state or of the United States, or by force of any civil process, with an opinion as to the legality or expediency of complying therewith.

SECT. 3. If the governor is satisfied that the demand is conformable to law and ought to be complied with, he shall issue his warrant, under the seal of the commonwealth, to some officer authorized to serve warrants in criminal cases, directing him at the expense of the agent making the demand, at a time designated in the warrant, to take and transport such person to the line of this state, and there deliver him over to such agent, and such officer may require aid as in criminal cases.

SECT. 4. No person arrested upon such warrant shall be delivered over to such agent of a state or territory, until he has been notified of the demand made for his surrender and had opportunity to apply for a writ of habeas corpus, if he claims such right of the officer making the arrest. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the attorney-general or other prosecuting officer for the district within which the arrest is made.

SECT. 5. An officer who delivers over to such agent for extradition any person in his custody upon such warrant, without having complied with the provisions of the preceding section, shall forfeit a sum not exceeding one thousand dollars.

SECT. 6. If the application for the arrest of a fugitive from the justice of the state is complied with, and an agent appointed, his account shall be audited and paid by the state.

SECT. 7. When a person is found in this state charged with an offence committed in another state or territory, and liable by the constitution and laws of the United States to be delivered over upon the demand of the executive of such other state or territory, any court or magistrate authorized to issue a complaint under oath, setting forth the facts necessary to bring the warrant to bring the person before such court or magistrate within the time required in the other cases.

SECT. 8. If upon the examination of the person by the court or magistrate, it appears that the complaint is true, and that the person is liable by the laws of the executive, he shall, if he fails to recognize with sufficient security, be committed to prison until he can obtain the warrant of the court or magistrate.

SECT. 9. If such person is committed to prison and there detained for an offence charged had been recognized, and the person recognizing fails to appear, he shall be defaulted. In case of other recognizances entered, the same shall be defaulted. If the person is charged with

prison and there detained until the day so appointed for his appearance.

SECT. 10. If the person so recognized or committed appears before the court or magistrate upon the day ordered, he shall be discharged, unless he is demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate sees cause to commit him, or to require him to recognize anew for his appearance on some other day, and if when ordered he does not so recognize, he shall be committed and detained as before: *provided*, that whether the person charged is recognized, committed, or discharged, any person authorized by the warrant of the executive may at all times take him into custody, and the same shall be a discharge of the recognizance, and not be deemed an escape.

How proceeded with or discharged.  
R. S. 142, § 10.

SECT. 11. The complainant in such case shall be answerable for all actual costs and charges, and the support in prison of any person so committed, to be paid in like manner as by a creditor for his debtor committed on execution. If the charge for support in prison is not so paid, the jailer may discharge such person in like manner as if he had been committed on an execution.

Expenses, how paid.  
R. S. 142, § 11.  
See Ch. 124.

#### PARDONS.

SECT. 12. In all cases in which the governor is authorized by the constitution to grant pardons, he may by and with the advice of the council, and upon the petition of the person convicted, grant the pardon, upon such conditions, with such restrictions, and under such limitations, as he deems proper, and he may issue his warrant to all proper officers, to carry such pardon into effect; which warrant shall be obeyed and executed, instead of the sentence originally awarded.

Governor may grant pardons.  
Const. Ch. 2, § 1,  
art. 8.  
R. S. 142, § 12.

SECT. 13. (R.) [When a pardon is granted to a convict, or any part of the punishment of a convict is remitted by the governor with advice of council, on conditions to be performed by the convict, the terms and conditions upon which the pardon or remission is granted shall be specified and set forth in the warrant thereupon to be issued. And the governor, by and with the advice of the council, may require a bond to be given to the commonwealth, in such sum and with such surety as he may approve, conditioned that the terms upon which the pardon or remission is granted shall by said convict be truly observed and kept. The bond shall be deposited with the treasurer of the commonwealth, and be prosecuted to final judgment and execution when the condition thereof is broken. When such bond is required by the governor, the pardon or remission of punishment shall not take effect until the bond is executed and deposited, as aforesaid.]

Terms of pardon; &c., to be set forth in warrant.  
Bond.  
1887, 181, § 1.  
(R.) For repeal and substitute see 1867, 301.

SECT. 14. (R.) [When a convict sentenced to confinement in the state prison, or any jail or house of correction, is pardoned, or his punishment remitted by the governor with the advice of the council, on conditions to be by the convict observed and performed, and it comes to the knowledge of the warden of the state prison, or keeper of the jail or house of correction, where the convict was confined, that he is abroad in violation of the conditions of his pardon or remission of punishment, such warden or keeper shall forthwith cause him to be arrested and detained according to the terms of his original sentence. In computing the period of his confinement, the time between the conditional pardon and subsequent arrest shall not be taken to be any part of the term of sentence.]

Keepers of jails, &c., to arrest convicts at large contrary to terms of pardon, &c.  
1887, 181, § 2.  
(R.) For repeal and substitute see 1867, 301.

SECT. 15. (R.) [When a convict is arrested and detained for any breach of the condition of his pardon or remission of punishment, the warden or keeper arresting him shall forthwith give notice in writing to the district-attorney for the district where such warden or keeper resides,

Convicts charged with violating conditions of pardon, &c.  
1887, 181, § 3.  
1869, 196.

(R.) For repeal  
and substitute see  
1967, 301.

Proceedings  
against convicts  
charged with  
violating condi-  
tions of pardon,  
&c.  
1967, 239, § 3.

How warrant of  
pardon executed.  
L. S. 142, § 12.

and such attorney shall file an in-  
to be held in said district, in the  
filed, so that it may be judicially  
the pardon or remission of punish-

SECT. 16. If it is admitted  
of the jury, that the condition is  
mation is filed shall sentence the  
for the unexpired term of his  
of confinement not exceeding  
tenced for the offence to which  
effect from and after the period  
imprisonment to which he was  
before sentenced to confinement  
solitary confinement as the court  
by the verdict of a jury or other  
the conditions of his condition  
charged.

SECT. 17. When a convict is  
muted, the officer to whom the  
as soon as may be after execution  
his hand, with his doings therein  
also file in the clerk's office of the  
victed, an attested copy of the  
whereof the clerk shall subjoin  
sentence.

## TIT

### OF PRISONS .

CHAPTER 178. — Of Jails and Houses

CHAPTER 179. — Of the State Prison

CHAPTER 180. — Of the Transfer of

## CHAI

### OF JAILS AND

#### JAILS.

##### SECTION

1. County jails, for what purposes to be used.
2. Sheriff may remove prisoners ;
3. may furnish employment to prisoners ;
4. to be reimbursed for damages for escape, reason of insufficiency of jail.
5. Jailers to return list of prisoners to the  
Penalty for neglect.

## SECTION

12. Houses of correction, overseers of, &c., general powers and duties;
13. may make contracts for work to be done in the house;
14. may make contracts for letting the convicts out for hire
15. Convicts may be employed on public lands, &c.
16. Pregnant female may be transferred to work-house, &c. Cost of her support.
17. Certain prisoners supposed to be reformed may be discharged, &c.
18. Night-walkers, &c., committed for third offence may be bound out or discharged in certain cases.

## PROVISIONS RESPECTING JAILS, HOUSES OF CORRECTION, PRISONERS, &amp;c.

19. Sheriff to have custody of jail, prisoners, &c. Master of house of correction in Suffolk.
20. Jailer, how removed, except in Suffolk.
21. Compensation of sheriff for care of prisoners. Not to receive rent for use of dwellings owned by the county;
22. of officers, assistants, &c.;
23. if inadequate, superior court to determine.
24. Jailer, &c., to keep calendar of prisoners. Penalty.
25. Warrants, &c., to be filed and delivered to sheriff's successor.
26. Burial of deceased prisoner.
27. Sheriff to deliver prisoners to successor;
28. upon death of, jailer to continue in office until, &c.
29. Female convicts may have custody of their children under the age of 18 months.
30. How such child may be removed, &c.
31. Prisons, &c., to be whitewashed, kept clean, &c.
32. Cleanliness of prisoners, their food, &c.
33. Classification and separation of prisoners.
34. Execution of sentence to solitary imprisonment;
35. and to hard labor, but not in engraving or printing. Log and chain may be used.
36. Punishment of prisoners refusing to work, &c. Not to be in solitary more than three days, &c.;
37. of refractory prisoners;
38. of poor debtors, &c., who commit depredations.
39. Sheriff's and keeper's authority not affected by two preceding sections.

## SECTION

40. Moral and religious instruction to prisoners, &c.
41. Instruction in reading and writing.
42. Spirit and strong drink prohibited, unless, &c.
43. Penalty for furnishing, or attempting to furnish, spirits, &c., to prisoners;
44. for neglect of duty by sheriff, jailer, &c.
45. Officers using intoxicating liquors to be removed.
46. Punishment for prisoners escaping, &c.
47. Record of conduct to be kept and term of imprisonment reduced in certain cases.
48. Removal of prisoners in case of pestilence;
49. in case of danger from fire.

## EXPENSE OF SUPPORTING PRISONERS, &amp;c.

50. Commissioners to procure supplies, &c.
51. Expense of supporting convicts in jails, &c., how paid.
52. Advancement of money for tools and materials, &c.
53. Master, &c., to keep account of earnings, &c.;
54. to supply fuel, &c. Allowance therefor;
55. to obey orders for furnishing specific rations. Penalty.
56. Compensation of master of house of correction in Suffolk.
57. Overseers, &c., to audit accounts for support of convicts, &c.
- 58, 59. Support of poor convicts, how recovered of kindred, town, &c.;
60. notice to town liable for.
61. Jailers, &c., to keep a prison book. Penalty for neglect.

## INSPECTORS OF PRISONS.

62. Inspectors of prisons, &c.
63. Keepers, &c., to make stated returns.
64. Inspectors, powers and duties of;
65. in Suffolk;
66. to have access to books, accounts, prisoners, &c.;
67. to notify district-attorney of violations of law.

## RETURNS.

68. Inspectors to make annual returns to governor.
69. Blank forms of returns to be furnished by secretary.
70. Sheriff, &c., to make returns. Abstract.
71. Penalties for neglect.
72. Prosecution of delinquents.

## JAILS.

Dukes. 1873 = 105-

SECTION 1. The jails in the several counties shall be used,—

First. For the detention of persons charged with offences and committed for trial:

Second. For the detention of persons committed to secure their attendance as witnesses on the trial of criminal causes:

Third. For the confinement of persons committed pursuant to a sentence upon conviction for an offence, and of all other persons committed for any cause authorized by law.

The provisions of this section shall extend to persons detained or committed by authority of the courts of the United States, as well as the courts and magistrates of this state, except as is provided in section sixty-one of chapter one hundred and forty-four.

SECT. 2. If there are several jails in a county, the sheriff may cause the prisoners to be confined in either, and may at his discretion remove them from one jail to another for their health or safe keeping, or for their more convenient appearance at court.

County jails, for what purposes to be used  
R. S. 148, § 1.  
1855, 489, § 19.  
1868, 216.  
See 1868, 155, § 2.  
1865, 208.  
14 Gray, 226.

Sheriff may remove prisoners.

Sheriff may furnish employment to prisoners ;  
1848, 324, § 4.  
See 1863, 98.

to be reimbursed for damages for escape, &c.  
R. S. 14, § 92.

Jailers to return list of prisoners, &c., to court.  
Penalty for neglect.  
R. S. 148, §§ 52, 54.  
Act of amend. § 19.  
1859, 196.

(R.) Repealed  
1864, 270, § 2.

SECT. 3. The sheriff may furnish to the prisoners employment of such nature and in such places as he deems best, and consistent with their safe keeping ; but this section shall not be construed to require the performance of any labor by persons confined in jail.

SECT. 4. In case of the escape of a prisoner by reason of insufficiency of the jail, whereby the sheriff is made liable to any party at whose suit the prisoner was committed, or to whose use any forfeiture was adjudged against him, the county shall reimburse all sums of money recovered by such party of the sheriff on account of the escape.

SECT. 5. (R.) [At the opening of each term of the superior court at which criminal business may be transacted, the jailers of the county shall return to the court a list of all prisoners in their custody, specifying the causes for which and the persons by whom they were committed, and produce and exhibit therewith, for the inspection of the court, their calendars of prisoners, and return a like list of the persons committed during the session of the court, in order that the court may take cognizance and make deliverance according to law of the prisoners committed for crimes within its jurisdiction. Jailers who neglect to make such returns, or to exhibit their calendars, shall be fined in the discretion of the court.]

## HOUSES OF CORRECTION.

Houses of correction, how provided, &c. ;  
R. S. 14, § 9.  
R. S. 148, §§ 1, 2.  
1848, 324, § 2.  
1854, 448, § 33.  
1855, 489, § 19.  
See 1860, 164.  
1862, 127, 199.  
101 Mass. 24.

to have enclosed yards.  
Jail may be used for ;  
R. S. 143, § 3.

If several in county, convicts classified ;  
1859, 249, § 7.  
(R.) Repeal and substitute.  
1862, 127.

overseers of, how appointed ;  
R. S. 143, §§ 11, 12.  
1857, 85.  
1859, 249, § 5.

compensation ;  
1857, 85, § 3.  
1859, 249, § 5.

materials, &c., for work in ; rules and regulations in. &c.  
R. S. 143, § 14.  
1857, 85.

SECT. 6. There shall be provided by the county commissioners in each county except the county of Dukes County, and in Suffolk by the aldermen of the city of Boston, at the charge of said counties and city respectively, a fit and convenient house or houses of correction, suitably and efficiently ventilated, with convenient yards, workshops, and other suitable accommodations, adjoining or appurtenant thereto, for the safe keeping, correcting, governing, and employing, of offenders legally committed thereto by authority of the courts and magistrates of this state or of the United States, except as provided in section sixty-one of chapter one hundred and forty-four.

SECT. 7. The yards shall be of sufficient extent for the convenient employment of the persons confined therein, and enclosed by fences of sufficient height and strength to prevent escapes, and also to prevent all persons without from access to or communication with any persons confined therein. When such house of correction is not provided, the jail or a part thereof may be used for that purpose, but when so used it shall be provided with a sufficient yard, so enclosed.

SECT. 8. (R.) [If there are several houses of correction in a county, the sentence of prisoners shall be to either house of correction therein, and the sheriff and county commissioners may classify the convicts and place them in either house.]

SECT. 9. The commissioners in the several counties, except Suffolk, shall annually on the first Wednesday of January appoint to each house of correction two or three suitable persons of the county, other than the sheriff or commissioners, to be overseers thereof, and may remove any overseer and fill vacancies.

SECT. 10. Each overseer shall receive from the county such annual compensation for his services and travel, not exceeding one hundred dollars, as the commissioners determine, and the directors for public institutions in the city of Boston shall receive such compensation as the city council allows.

SECT. 11. The commissioners in the several counties except Suffolk, and the board of directors for public institutions in Boston, shall cause to be provided, at the expense of said counties and city respectively, suitable materials and implements sufficient to keep at work all the persons committed to the house of correction, and may from time to time establish needful rules for employing, reforming, governing, and punish-



ing, the persons so committed, for procuring and preserving such materials and implements, and for keeping and settling all accounts of the cost and expenses of procuring the same, and of all labor performed by each of the persons so committed.

SECT. 12. In the county of Suffolk the board of directors for public institutions, and in other counties the overseers, shall see that the rules established for the management of the house of correction and the government of the persons confined therein are strictly observed, examine all accounts of the master relating to the earnings of the prisoners and all expenses of the institution, and keep a fairly written register of their official proceedings.

SECT. 13. They may make contracts for work to be done in the house, with any person disposed to supply materials to be there wrought, and in such case may stipulate that the contractor shall furnish some person, to be approved by them, to oversee the labor of the convicts and instruct them in business or trades, conforming to all rules of the prison and not interfering with the discipline thereof.

SECT. 14. They may make contracts for letting out to hire during the day time any of the persons there confined, to employers who live so near to the house of correction that the directors or overseers or the master of the house can have the general inspection of the conduct of the persons so let out, and of the treatment they receive.

SECT. 15. The commissioners, or directors, may, with the assent of the master or keeper of any house of correction, employ any of the prisoners to labor upon the public lands and buildings belonging to the county.

SECT. 16. When it appears to the physician of a house of correction that a female convict is in a state of pregnancy, any judge of the superior court, or any police court, may, upon application of the master or keeper of the house, or of the convict, revise her sentence so far as to order her to be transferred to any workhouse or house of industry in the same county for such term as is expedient, not exceeding the remainder of her sentence; and may at any time before the expiration of her sentence cause her to be again restored to the house of correction. For the support and custody of each female so transferred, two dollars a week shall be paid by the county to the city or town to which she is transferred.

SECT. 17. When it appears to the overseers or directors of a house of correction, house of industry, or workhouse, that a person there confined on conviction before a justice of the peace of either of the offences mentioned in section twenty-eight of chapter one hundred and sixty-five, has reformed and is willing and desirous to return to an orderly course of life, they may, by a written order, discharge him from confinement. Any person committed by the superior court, or any police court, for either of said offences, may be discharged by such courts respectively upon the recommendation of the overseers or directors.

SECT. 18. The overseers or directors of any house of correction, workhouse, or house of industry, may, after six months from the time of sentence, discharge any person committed thereto under section thirty-five of chapter one hundred and sixty-five, upon being satisfied that the convict has reformed; or may bind out such person for any term during the period of the sentence, as an apprentice or servant to any inhabitant of this state; and said overseers and directors, and the master, mistress, apprentice, and servant, shall respectively have all the rights and privileges, and be subject to all the duties set forth in chapter one hundred and eleven, in the same manner as if such binding were made by the overseers of the poor; and the relations between the parties shall not be affected by the age of the party bound. If the master or mistress is discharged from the contract of service or apprenticeship as provided in said chapter, the person bound shall be returned to the

Overseers, &c.,  
general powers  
and duties;  
R. S. 143, § 11.  
1867, 85.

may make contracts for work to be done in house, &c.;  
R. S. 143, § 12.  
1869, 249, § 5.

1875; 83.

for letting out to hire, &c.  
R. S. 143, § 12.

Convicts may be employed on public lands, &c.  
1869, 249, § 6.

Pregnant female may be transferred to workhouse, &c. Cost of her support.  
1864, 416, §§ 2, 3.  
1865, 40.  
1869, 196.

Prisoners reformed may be discharged, &c.  
R. S. 143, § 18.  
1869, 195.  
See Ch. 165, § 84.  
See 1862, 189.  
1866, 194, § 3.  
1869, 236, § 5.  
1869, 258.

Night walkers, &c., committed for third offence may be bound out or discharged in certain cases.  
1865, 60, § 2.  
See 1869 258.

place of confinement, and serve out the original sentence, if any portion thereof is unexpired; but the overseers or directors shall not be liable to the costs of the process provided in said chapter.

#### PROVISIONS RESPECTING JAILS, HOUSES OF CORRECTION, PRISONERS, &c.

Sheriff to have custody of jail, prisoners, &c. Master of house of correction in Suffolk  
1855, 249, § 1.  
See 1865, 241.

SECT. 19. The sheriff shall have the custody, rule, and charge of the jails, and except in the county of Suffolk, the houses of correction in his county, and of all prisoners therein, and shall keep the same by himself, or by his deputy, as jailer, master, or keeper, for whom he shall be responsible. The jailer, master, or keeper shall appoint all subordinate assistants, employees, and officers, for whom he shall be responsible. In the county of Suffolk the city council of Boston shall appoint a suitable person to be master of the house of correction, to hold his office during their pleasure.

Master, how removed.  
1859, 196.  
1859, 249, §§ 1, 8.

SECT. 20. Any master, keeper, or jailer, except in the county of Suffolk, may be removed by the superior court for neglect of duty, or wasteful or extravagant use of supplies, upon complaint of the county commissioners, setting out the facts, and after notice to the sheriff and the person complained of, and a hearing thereon.

Compensation of sheriff for care of prisoners, &c.;  
R. S. 14, § 92.

SECT. 21. For the safe keeping of the prisoners committed to his custody, the sheriff shall have such compensation from the county, not less than twenty dollars a year, as the county commissioners, or in the county of Suffolk the mayor and aldermen, order. He shall not receive any rent or emolument from the jailers and keepers of the houses of correction, for the use and occupation of the dwelling-houses provided for them by the county.

of officers, assistants, &c.;  
1859, 249, §§ 1, 2.  
See 1860, 92.  
(R.) Struck out by 1864, 270, § 1.

SECT. 22. The commissioners, (R.) [*except in the county of Suffolk.*] shall establish fixed salaries for all officers, assistants, and employees of jails and houses of correction, which shall be in full compensation for all their services, and for which they shall devote their whole time to the discharge of their duties, unless released therefrom by the commissioners.

If inadequate, superior court to determine.  
1859, 196.  
1859, 249, § 8.

SECT. 23. If the sheriff, master, keeper, or jailer, deems any such salary inadequate, he may present his petition, showing the facts, to the superior court next to be holden for the county, and the court, after notice to the chairman of the county commissioners, and a hearing, shall fix the salary, and pass such further order in the premises as law and justice require.

Jailer, &c., to keep calendar of prisoners.  
Penalty  
R. S. 14, § 88.  
1859, 196, § 5.  
6 Allen, 477.  
See 1861, 188.  
1864, 194.

SECT. 24. The jailer, keeper, or master, of each jail and house of correction, shall keep in a bound book an exact calendar of all prisoners committed thereto, and shall cause to be distinctly registered therein the names of all prisoners, their places of abode, additions, and the time, cause, and authority, of their comings of such as are committed such facts as, with the entries in or directors to make the return seventy. When a prisoner is booked the time and authority of the time and manner of the entry neglecting to keep such calendar forfeit one hundred dollars, to be recovered in an action of tort, in the name of the city of Boston, discharged prisoners.

Warrants, &c., to be filed, and delivered to sheriff's successor.  
R. S. 14, § 85.  
1859, 186.

SECT. 25. All warrants, minutes, papers, or attested copies thereof, shall be regularly filed in a calendar, be safely kept in a book until the expiration of the sheriff's

removal from office, be delivered to his successor; and in default thereof the sheriff or his executors or administrators shall forfeit two hundred dollars.

SECT. 26. When a person imprisoned for any cause dies in prison, the sheriff or the keeper shall deliver the body to his relations or friends if they request it. If no application is made therefor, the sheriff or keeper shall bury the same in the common burying ground, and the expenses be paid by the city or town in which such person had a legal settlement, if any, otherwise by the county.

Burial of deceased prisoner.  
R. S. 14, § 87.

SECT. 27. Every sheriff, upon the expiration of his commission, or his resignation or removal from office, shall deliver to his successor all prisoners in his custody, and for that purpose shall retain the keeping of the jails and houses of correction under his care, and of the prisoners therein, until his successor is appointed and qualified.

Sheriff to deliver prisoners to successor;  
R. S. 14, § 84.  
1859, 249, § 1.

SECT. 28. In case of the death of the sheriff, the jailer, master, or keeper, by him appointed, shall continue in office and retain the custody, rule, and charge, of the jail or house of correction, and of all prisoners committed thereto, until a successor to the deceased sheriff is appointed or elected and qualified, or until the governor, by and with the advice of the council, removes such jailer, master, or keeper, and appoints another. The jailer, master, or keeper, appointed by the governor, shall give bond with sureties as the governor directs and approves for the faithful performance of the duties of his office.

upon death of, jailer to continue in office until, &c.  
R. S. 14, § 86.  
1859, 249.

SECT. 29. When the mother of a child under the age of eighteen months is imprisoned in a house of correction, jail, workhouse, or other place of confinement, and is capable and desirous of taking care of said child, the keeper shall, upon the order of the court or magistrate committing her, or of any overseer of the poor, receive the child and place it under the care and custody of its mother.

Female convicts may have custody of their children under a certain age.  
1858, 57, § 1.

SECT. 30. When the overseers, inspectors, or other like officers, of such institution, are satisfied that the health and comfort of such child call for its removal, or that for any cause it is expedient that it should be removed, they shall give notice to the father or other relatives thereof; and if neither can be found to receive it, to the overseers of the poor of the city or town in which it has a legal settlement, who shall receive it; or if it has no settlement in this state, it shall be sent to one of the state almshouses, as is provided in the case of alien paupers.

How such children may be removed, &c.  
1858, 57, § 2.

SECT. 31. The keeper of each jail and the master of each house of correction shall, at the expense of the county, see that the same is constantly kept in as cleanly and healthful a condition as may be, and shall cause the whole interior thereof, including the floors, to be thoroughly whitewashed with lime at least twice in each year, and the walls and floors of each room, while any person is confined therein, to be so whitewashed once in each month between the first of May and the first of November. No permanent vault shall be used in any apartment. Every room occupied by a prisoner shall be furnished with a suitable bucket with a cover made to shut tight, for the necessary accommodation of such prisoner, and such bucket when used shall be emptied daily and constantly kept in good order.

Prisons, &c., to be whitewashed, kept clean, &c.  
R. S. 143, § 38.

SECT. 32. The keeper and master shall see that strict attention is constantly paid to the personal cleanliness of all prisoners in their custody, and shall cause the shirt of each prisoner to be washed, and the prisoner himself to be shaved, once at least in each week, and to have a weekly bath of cold or tepid water applied to the whole surface of the body, unless by reason of sickness such bath would be hurtful or dangerous. Each prisoner shall be furnished daily with as much clean water as he has occasion for either as drink or for the purpose of personal cleanliness, and with a clean towel once a week. No clothes shall be washed or hung out wet in any room which is occupied by a prisoner

Cleanliness of prisoners, their food, &c.  
R. S. 143, § 39.  
1848, 324, § 1.

during the night. All prisoners not in solitary confinement shall be served three times each day with wholesome food, well cooked, in good order, and in sufficient quantity.

Classification and separation of prisoners.  
R. S. 143, § 35.  
See § 44.

SECT. 33. Male and female prisoners shall not be put or kept in the same room; nor, unless the crowded state of the jail or house of correction requires it, shall any two prisoners, other than debtors, be allowed to occupy the same room, except for work. Persons committed for debt shall be kept separate from felons, convicts, and persons confined upon a charge of felony or other infamous offence, and all conversation between prisoners in different apartments shall be prevented. Minors shall be kept separate from notorious offenders and those convicted of a felony or other infamous crime. Persons committed on charge of an offence shall not be confined with convicts, and prisoners charged with or convicted of an offence not infamous shall not be confined with those charged with or convicted of an infamous crime, except while at labor or assembled for moral or religious instruction, at which times no communication shall be allowed between prisoners of different classes.

Execution of sentence to solitary imprisonment;  
R. S. 143, § 20.  
1854, 393.

1873 = 143  
1876 C. 61

SECT. 34. When a convict is sentenced to solitary imprisonment and hard labor in a jail or house of correction, the master or keeper shall execute the sentence of solitary imprisonment by confining the convict in one of the cells, or if there is none, then in the most retired and solitary part of the jail or house, and during the time of solitary imprisonment the convict shall be fed with bread and water only, unless other food is necessary for the preservation of his health. No intercourse shall be allowed with any convict in solitary imprisonment, except for the conveyance of food and other necessary purposes.

and to hard labor; but not in engraving or printing  
Log and chain may be used.  
R. S. 143, § 21.  
1850, 259, § 4.

SECT. 35. As soon as the term of solitary imprisonment has expired, the master or keeper shall furnish the convict with tools and materials or other means for work in a suitable manner, in which he can be usefully or profitably employed, either in the house of correction or jail, or in the close yard thereof; but no convict shall be employed in engraving or printing of any kind. Such convict may if necessary be confined by a log and chain, or in such other manner as shall prevent his escape without unnecessarily inflicting bodily pain or interrupting his labor. The overseers, or, when the punishment is inflicted in the jail, the sheriff, shall oversee the execution of all such sentences.

Punishment of prisoners refusing to work, &c.; not to be in solitary more than three days, &c.;  
R. S. 143, § 22.  
1853, 34.

SECT. 36. If a convict is refractory, or, during the time for which he is sentenced to hard labor, refuses or neglects without reasonable cause to labor in a suitable manner when required, he shall be kept in solitary confinement and fed on bread and water as before provided so long as he is refractory or refuses to labor; but no keeper of a jail or master of a house of correction shall confine in solitary imprisonment any convict for more than three days at one time, without informing the sheriff or overseers thereof and the reasons therefor.

of refractory prisoners.  
R. S. 143, § 46.  
1857, 86.

SECT. 37. If a person confined in a jail or house of correction upon a conviction or charge of an offence against the commonwealth, is refractory or disorderly, or wilfully or wantonly destroys or injures any article of furniture or other property, or any part of such prison, the sheriff, overseers, or board of directors for public institutions, respectively, after due inquiry may cause him to be kept in solitary confinement, not more than ten days for one offence; and during such confinement he shall be fed with bread and water only, unless other food is necessary for the preservation of his health.

of poor debtors, &c., who commit depredations.  
R. S. 143, § 47.  
1852, 812.

SECT. 38. If a person committed to jail on meane process or execution, or for any other cause than those mentioned in the preceding section, is on complaint of the keeper convicted before a justice of the peace, or police court, of either of the offences therein specified, he shall be punished by solitary imprisonment as directed in said section, not more than ten days for each offence. He shall also be liable for double

the amount of the damage done to the jail, furniture, or other property, to be recovered in an action of tort, which may be brought by the sheriff or county treasurer in the name and to the use of the county.

SECT. 39. The two preceding sections shall not affect the authority of a sheriff, jailer, or master of a house of correction, to preserve order and enforce strict discipline among the prisoners in his custody.

SECT. 40. The keeper or master shall at the expense of the county provide for each prisoner under his charge, who is able and desirous to read, a copy of the Bible or of the New Testament, to be used by such prisoner at proper seasons during his confinement, and the county commissioners may, in their discretion and at the expense of their county, provide moral and religious instruction for the prisoners confined in the jails and houses of correction of their respective counties. Prisoners in the state prison, or in any jail, house of correction, almshouse, or other place of confinement, may, in their illness, on request to the warden, keeper, or master, receive the visits of any clergyman they may desire.

SECT. 41. The county commissioners of each county, and the aldermen of the city of Boston, with the sheriff of the county, may at the expense of their county or city furnish suitable instructions in reading and writing for one hour each evening, except Sundays, to such prisoners as may be benefited thereby and are desirous to receive the same.

SECT. 42. No sheriff, jailer, master of a house of correction, or other officer, or under keeper of a prison, shall, under any pretence, give, sell, or deliver, or knowingly suffer to be given, sold, or delivered, to any person committed to jail for debt and supported at the charge of the creditor, or to a prisoner in confinement upon conviction or charge of an offence, any spirituous liquor or mixed liquor, part of which is spirituous, or any wine, cider, or strong beer, unless the attending physician of the prison certifies in writing that the health of the prisoner requires it, in which case he shall be allowed the quantity prescribed, and no more.

SECT. 43. Whoever gives, sells, or delivers, to a person confined in a jail, house of correction, house of industry, workhouse, or prison, or to a person in custody of a sheriff, constable, police officer, jailer, master of a house of correction, or warden of a prison, any spirituous or other liquors, as mentioned in the preceding section, or has in his possession, within the precincts of any jail, house of correction, or other place of confinement mentioned in this chapter, any such liquors, with intent to convey or deliver the same to any person or prisoner confined therein, unless under the direction of the physician appointed to attend such prisoner, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the jail or house of correction not exceeding two months.

SECT. 44. If a sheriff, jailer, or master of a house of correction, gives, sells, or delivers, to any prisoner in his custody, or willingly or negligently suffers such prisoner to have or drink any spirituous, fermented, or other strong or mixed liquor, prohibited by section forty-two, or places or keeps together prisoners in his custody of different sexes or classes, contrary to the provisions of section thirty-three, he shall in each case forfeit for the first offence twenty-five dollars, and for any such offence committed after the first conviction fifty dollars, and shall on such second conviction be further sentenced to be removed from office and to be incapable of holding the office of sheriff, deputy-sheriff, or jailer, or master or keeper of any prison, for the term of five years.

SECT. 45. The sheriffs of the several counties, and the board of directors for public institutions in Boston, shall forthwith remove any officer by them respectively appointed to any position of trust or author-

Sheriff's and keeper's authority not affected

R. S. 143, § 48.

Moral and religious instruction to prisoners, &c.

R. S. 143, § 40.

1848, 29, § 1.

1856, 398.

1875, 126

Instruction in reading and writing

1848, 324, § 8.

1854, 448, § 83.

Spirit and strong drink prohibited, unless, &c.

R. S. 143, § 34.

See § 44.

Penalty for furnishing, or attempting to furnish, spirits, &c., to prisoners:

R. S. 143, § 37.

1854, 98.

for neglect of duty by sheriff, jailer, &c.

R. S. 143, § 86.

1839, 185.

Officers using intoxicating liquors to be removed.

1858, 182, § 2.  
1859, 249.

Punishment for  
prisoners es-  
caped, &c.  
R. S. 148, §§ 49,  
50, 51.  
1851, 98.  
4 Met. 381.  
6 Met. 555.  
5 Allen, 120.  
101 Mass. 24.

Record of con-  
duct to be kept,  
and term of im-  
prisonment re-  
duced in certain  
cases  
1857, 284, § 1.  
1858, 77.  
1859, 108.  
18 Gray, 618.

Removal of  
prisoners in  
case of pesti-  
lence.  
R. S. 148, § 41.  
1859, 198.

In case of dan-  
ger from fire.  
R. S. 148, § 42.

Commissioners  
to procure sup-  
plies, &c.  
1859, 249, § 4.

Expense of  
supporting con-  
victs in jails  
&c, how paid.  
R. S. 148, § 27.  
1830, 156.  
8 Met. 513.  
12 Allen, 510.  
See 1866, 280, § 2.  
1870, 870, § 4.

ity in the jails and houses of correction, who is known to use intoxicating liquors as a beverage.

SECT. 46. Whoever lawfully imprisoned in any place of confinement established by law, other than the state prison, breaks therefrom and escapes, or forcibly breaks the same with intent to escape, or by force or violence attempts to escape therefrom, shall be punished by imprisonment in the state prison not exceeding five years, or in the jail or house of correction not exceeding three years, or by fine not exceeding one thousand dollars.

SECT. 47. The keeper of every jail and the master of every house of correction shall keep a record of the conduct of each convict whose term of imprisonment is not less than four months, and for every month that a convict appears by such record to have faithfully observed all the rules and requirements of the prison, and not to have been subjected to punishment, there shall be deducted from the whole term of his sentence, whether in one or more cases, as follows: from a term of less than three years, one day; from a term of three and less than seven years, two days; from a term of seven and less than ten years, four days; and from a term of ten years or more, five days: said record shall be submitted to the sheriff and to the overseers of the house of correction, or board of directors for public institutions in the city of Boston, to be considered by them in recommending prisoners to executive clemency.

SECT. 48. If disease breaks out in a jail or other prison, which in the opinion of the inspectors of the prison may endanger the lives or health of the prisoners to such a degree as to render their removal necessary, the inspectors may designate in writing some suitable place within the same county, or any prison in a contiguous county, as a place of confinement for such prisoners. Such designation being filed with the clerk of the superior court, shall be a sufficient authority for the sheriff, jailer, master, or keeper, to remove all the prisoners in his custody to the place designated, and there to confine them until they can be safely returned to the place whence they were removed. Any place to which the prisoners are so removed shall during their imprisonment therein be deemed a prison of the county in which they were originally confined, but they shall be under the care, government, and direction of the officers of the county in which they are confined.

SECT. 49. If a jail or other prison, or any building near thereto is on fire, and the prisoners are exposed to danger thereby, the sheriff, jailer, or other person having charge of the prison, may remove such prisoners to a place of safety, and there confine them so long as may be necessary to avoid the danger, and such removal and confinement shall not be deemed an escape of the prisoners.

#### EXPENSE OF SUPP

SECT. 50. The commissioners, without extra charge or commissi-  
cure, or cause to be procured, all  
houses of correction, to be furnish-  
tion and at the expense of the con

SECT. 51. All charges and ex-  
and employing, convicts sentenced  
of correction, of the safe keeping  
committed for trial or sentence, ar  
prisoners committed on mesne pr  
for their board are paid by the def  
shall be paid from the county tr  
master being first settled and allc

county of Suffolk by the board of accounts; and no allowance therefor shall be made by the commonwealth.

SECT. 52. The county commissioners, and the aldermen of the city of Boston, may order such sums of money as may from time to time be necessary, to be advanced out of the treasuries of their counties or city to the master of the house of correction or keeper of the jail, for the purpose of providing such tools, materials, and other things, as may be required for the employment, restraint, and safe keeping of the convicts; and the master or keeper shall appropriate the same under the direction of the officers ordering the advancement, and account to them for the expenditure thereof.

Advancement of money for tools and materials, &c.  
R. S. 143, §§ 23, 24.  
1839, 146, § 1.  
1854, 448, § 33.

SECT. 53. Each master or keeper shall cause the articles manufactured by the prisoners in his custody, or the produce of their labor, to be disposed of to the best advantage, and under the direction of said commissioners or aldermen shall cause accounts to be kept of the proceeds thereof, and shall present such accounts to them for settlement semiannually, and as much oftener as they deem it necessary. He shall pay into the treasury of the county or city, at such time as said officers direct, the amount of sales and other proceeds of the labor and earnings of the prisoners in his custody, or the balance thereof.

Master, &c., to keep account of earnings, &c.;  
R. S. 143, § 26.

SECT. 54. The master or keeper shall furnish, at the expense of the county, necessary fuel, bedding, and clothing, for all prisoners in his custody upon charge or conviction of any offence against the commonwealth, and shall present to the county commissioners, or in the county of Suffolk the board of accounts, a full account of his charges so incurred, and also for necessary furniture for the prison; and the commissioners or board of accounts shall make a reasonable allowance therefor, which shall be paid from the county treasury.

to supply fuel, &c. Allowance therefor;  
R. S. 143, § 44.

SECT. 55. When the commissioners or the aldermen of the city of Boston direct specific rations or articles of food, soap, fuel, or other necessities, to be furnished to the prisoners, the keeper or master shall conform to such direction, and if he refuses or neglects to furnish the same, he shall be subject for a first and second offence to the penalties prescribed by section forty-four for the offences therein mentioned.

to obey orders for furnishing specific rations.  
Penalty.  
R. S. 143, § 45.  
1854, 448, § 33.

SECT. 56. The board of directors for public institutions in Boston shall from time to time determine what sum the master of the house of correction for the county of Suffolk shall receive for the board of the persons committed to his custody, and the master shall in addition to such board receive such further compensation for his services as the city council of Boston deem just and reasonable.

Compensation of master of house of correction in Suffolk.  
R. S. 143, § 14.  
1857, 35.

SECT. 57. In the county of Suffolk the board of directors for public institutions, and in other counties the overseers of the houses of correction, shall, twice in each year, and oftener if necessary, examine and audit the accounts for the care and expense of supporting and employing the persons committed to the houses of correction in their county, and certify what sum is due for supporting and employing each person, after deducting the net profit of his labor. If any of said persons refuse or neglect, for fourteen days after demand in writing by the master or keeper, to pay the sum so certified to be due, the commissioners or directors may commence an action of contract in the name of their county, or in Suffolk in the name of the city of Boston, and recover against such person the sum found to be due; but the defendant may prove on the trial that the whole sum allowed and certified by the directors or overseers was not due, and may, as in other cases, tender, bring into court, or offer judgment for, such sum as he admits to be due.

Overseers, &c., to audit accounts for support of convicts, &c.  
R. S. 143, § 15.  
1852, 140.  
1852, 312.  
1857, 35.

SECT. 58. When they certify that a sum is due for supporting and employing any person who has not sufficient estate to pay the same, such sum may be recovered by the county, or in Suffolk by the city of

Support of poor convicts, how recovered of kindred, town, &c.

R. S. 148, § 16.  
1839, 146, § 2.  
1848, 66, §§ 2, 3.  
18 Pick. 470.  
4 Met. 278.  
5 Met. 54.

Support of poor  
convicts, how  
recovered of  
kindred, or  
town;

R. S. 148, § 16.  
1848, 154, § 1.  
20 Pick. 112.  
22 Pick. 211.

notice to town  
liable for.  
1848, 66, § 1.  
1857, 86.

Jailers, &c., to  
keep a prison  
book, &c. Pen-  
alty for neglect.  
1848, 276, § 2.  
1856, 139, § 6.  
13 Gray, 439.

Boston, of any parent, master, or kindred, by law liable to maintain him. If he is committed for any offence mentioned in section twenty-one of chapter one hundred and sixty-one, or section twenty-eight of chapter one hundred and sixty-five, and has no parent, master, or kindred, liable by law to maintain him, such sum, to an amount not exceeding one dollar a week, may be recovered of the city or town where he has his lawful settlement. *and any city or town having such laws may sue the person of any parent, master, or kindred, liable by law to maintain him.*

SECT. 59. Upon refusal or neglect to make payment for thirty days after the same is demanded in writing of the parent, master, or kindred, or of any member of the city council of the city, or any overseer of the poor of the town, respectively liable by law therefor, the county, or in Suffolk the city of Boston, at any time within two years after the account has been so certified, and not afterwards, may commence and maintain an action for the same, against the party so liable, in the form of action and subject to the defence prescribed and allowed in section fifty-seven.

SECT. 60. When a person is committed for whose support a city or town may be liable under section fifty-eight, the master or keeper shall immediately give notice thereof in writing, by mail or otherwise, to the mayor and aldermen or selectmen of such city or town.

SECT. 61. Jailers and masters of houses of correction shall have a prison book, in which they shall keep an account of the value of labor of the prisoners, and salaries of officers; and also of articles furnished for the support of the prisoners, the quantity, of whom bought, and price paid, classified as follows: First, cost of provisions including the portion consumed by the family of the jailer or master: Second, cost of clothing: Third, cost of beds and bedding: Fourth, cost of medicines: Fifth, cost of medical attendance: Sixth, cost of instruction, religious or otherwise: Seventh, cost of fuel: Eighth, cost of light: Ninth, allowance to discharged prisoners: Tenth, allowance to witnesses in money or clothing. The prison book, verified by the oath of the jailers or masters, shall be exhibited to the commissioners or directors when their accounts are presented for examination, and at other times when demanded. A jailer or master who neglects to keep such book, or to enter therein such facts, or wilfully makes any false entry therein, shall forfeit one hundred dollars, to be recovered by the directors or commissioners in an action of tort in the name of the county, or, in Suffolk, of the city of Boston, and expended by them for the relief of discharged convicts.

#### INSPECTORS OF PRISONS.

Inspectors.  
R. S. 148, § 28.  
1848, 61, § 2.  
(R.) Struck out  
by 1864, 311, § 1.  
Keepers, &c., to  
make stated re-  
turns.  
R. S. 148, § 28.  
1848, 61, § 2.

SECT. 62. The commissioners for the several counties, (R.) [and in the county of Suffolk the judge of the probate court and the justices of the police court,] shall be inspectors of the prisons in their counties.

SECT. 63. The keeper, master, or superintendent, of each jail, house of correction, or other place of confinement required to be inspected, shall at least twice in each year make returns to said inspectors, at such time and in such form as they direct, setting forth the name, age, and residence, if known, of each person who is or has been in custody since the last return, the cause of imprisonment, and the manner in which he has been treated and employed, the punishments inflicted, and the names of all persons who have died, escaped, been pardoned, or discharged, with all other circumstances required by the inspectors.

SECT. 64. The commissioners shall twice in each year, at intervals not exceeding eight months, by themselves or a committee of not less than two of their members, visit and inspect all the prisons in their county, and fully examine into everything relating to the government, discipline, and police, thereof. The committee shall as soon as may be after each inspection make and subscribe a detailed report to the commissioners,

Inspectors,  
powers and du-  
ties of.  
R. S. 148, § 29.  
1848, 221.



stating the condition of each prison as to health, cleanliness, and discipline, at the time of inspection; the number of persons confined there within the six months next preceding, or since the last inspection, and for what causes; the manner in which any convicts have been employed; the number of persons usually confined in one room; the distinction, if any, usually observed in the treatment of the different classes of persons detained in such prisons; the punishments inflicted; any evils or defects in the construction, discipline, or management, of such prisons; the names of the prisoners who have died, escaped, been pardoned or discharged; and whether any of the provisions of law in relation to such prisons have been violated or neglected, with the causes, if known, of such violation and neglect.

Inspectors of  
prisons, powers  
and duties of;

SECT. 65. (R.) [The inspectors in the county of Suffolk shall at the times and in the manner mentioned in the preceding section, by a committee of not less than three of their members, visit and inspect the jail, house of correction, and all other places of imprisonment and confinement established by law in the city of Boston. The committee shall as soon as may be after each inspection make and subscribe such a detailed report to the aldermen, in relation to the prison in the city of Boston, as is required by the preceding section to be made to the commissioners in their respective counties.]

in Suffolk.  
R. S. 143, § 30.  
1864, 448, § 33.  
(R.) Repealed by  
1864, 311, § 2.

SECT. 66. When the inspectors or any of them visit any of said prisons, either for the purpose of inspection or any other cause, the sheriff, master, keeper, or other officer having charge thereof, shall admit them when required into every apartment of such prison, exhibit all books, precepts, documents, accounts, and papers, relating to the concerns of the prison, or to the detention or confinement of any person therein, which may be required, and afford to them such aid as may be requested in the performance of any part of their duties. The inspectors or their committee may examine on oath to be administered by one of them, either by interrogatories in writing to be answered in writing and subscribed, or otherwise as they may direct, any officer, keeper, or other person, in relation to the concerns or management of any prison; they may also apart and without the presence of any officer or keeper converse with any of the prisoners.

to have access  
to books, ac-  
counts, prison-  
ers, &c.;  
R. S. 143, § 31.

SECT. 67. If it appears to the inspectors, from the report of their committee or otherwise, that any of the provisions of law in relation to prisons have been violated or neglected in their county, they shall forthwith give notice thereof to the district-attorney.

to notify dis-  
trict-attorney of  
violations of  
law.  
R. S. 143, § 32.

#### RETURNS.

[For substitute see 1864, 307; 1870, 370, § 9.]

SECT. 68. The inspectors shall on or before the fifteenth day of October in each year cause to be transmitted to the governor authentic copies of any information by them given to the district-attorney in relation to any violation or neglect of the law respecting prisons, and a statement of the expenses incurred in providing moral and religious instruction for the prisoners confined in the jails and houses of correction in their respective counties, with such further statements and suggestions as may in their opinion require the attention of the government.

Inspectors to  
make annual  
returns to gov-  
ernor.

R. S. 143, § 33.  
1840, 15, § 3.  
1848, 29, § 2.  
1857, 40.  
1858, 46.

See 1864, 307.  
1870, 370, § 9.

SECT. 69. The secretary of the commonwealth shall annually in September furnish to the sheriffs and board of directors for public institutions in the city of Boston, blank forms of returns concerning jails and houses of correction, for the year ending on the last day of September, containing the following interrogatories, and with the two following sections printed thereon.

Blank forms of  
returns to be  
furnished by  
secretary.

1859, 139, §§ 1, 2.  
See 1864, 307.

#### Jails.

Number of prisoners in jail October first; committed during the year; males; females; adults; minors; whites; colored; natives of this state; natives of other

Returns re-  
specting jails;

states; natives of other countries; who cannot read nor write; natives of Massachusetts who cannot read nor write; who have been married; who have been intemperate; who have been in prison before; committed as insane; for debt; as witnesses; for trial or examination; sentenced for murder; manslaughter; setting fires; robbery; rape; attempts at rape; adultery; lewd conduct; assault; burglary; perjury; forgery; larceny; making or passing counterfeit money; drunkenness; as common drunkards; for violation of liquor law; keeping houses of ill fame; for all other offences; discharged by writ of habeas corpus; by being recognized or bailed; by payment of fines and costs; by expiration of sentence; as poor convicts unable to pay fines and costs; transferred to other jails for trial; sent to court and not returned; executed; sent to the state prison; sent to the house of correction; sent to the state reform school; escaped and not retaken; of debtors discharged on payment of debt; discharged by taking poor debtor's oath; by order of creditor; of witnesses discharged; of prisoners that died; discharged by processes not specified above; remaining in confinement September thirtieth. Average number of prisoners.

Amount expended for provisions; clothing; fuel; light; medicines; medical attendance; beds and bedding; instruction; allowance to discharged prisoners; to witnesses; officers' salaries; expenses of all kinds.

Value of the labor of prisoners.

#### *Houses of Correction.*

respecting  
houses of cor-  
rection.

Number in confinement October first; committed during the year; males; females adults; minors; whites; colored; natives of this state; natives of other states; natives of other countries; who cannot read nor write; natives of Massachusetts who cannot read nor write; who have been married; who have been intemperate; who were insane when committed; who became insane in prison; who have been in prison before; committed for adultery; lewd conduct; keeping houses of ill fame; assault; violation of liquor law; drunkenness; as common drunkards; for larceny; vagrancy; all other offences; discharged on expiration of sentence; on payment of fines and costs; as poor convicts unable to pay fines and costs; on habeas corpus; on account of sickness; on account of insanity; by order of overseers; escaped and not retaken; that have died; discharged by processes not specified above; remaining in confinement September thirtieth. Average number of prisoners.

Amount expended for provisions; clothing; fuel; light; medicines; medical attendance; beds and bedding; instruction; allowance to discharged prisoners; officers' salaries; expenses of all kinds.

Value of labor of prisoners.

Sheriffs, &c., to  
make returns.  
Abstract.  
1840, 15, § 2.  
1867, 26, § 40.  
1868, 46.  
1869, 129, §§ 1, 2.  
See § 24.

See 1864, 307.  
1870, 370, § 9.

Penalties for  
neglect.  
1867, 26.  
1867, 290, §§ 1-3.  
1869, 129, § 2.

Prosecution  
delinquents.  
1869, 129, § 4.

SECT. 70. On or before the fifteenth day of October in each year, in the county of Suffolk, the board of directors for public institutions shall, in relation to houses of correction, and the sheriff in relation to jails, and in each of the other counties the sheriff in relation to both jails and houses of correction, shall make and transmit to the secretary of the commonwealth true answers to the inquiries contained in said blanks. The secretary shall prepare and transmit an abstract thereof, in a printed form, to the legislature at the ensuing session thereof.

SECT. 71. Every sheriff who omits to make and transmit, according to the preceding section, true answers to such inquiries, and every director, when his board omits to make and transmit such answers, shall forfeit one hundred dollars.

SECT. 72. The secretary, when he finds that a sheriff or director is liable to a forfeiture under the preceding section, shall forthwith notify the district-attorney for the district in which such overseer or director resides, who shall immediately institute a complaint therefor, and the forfeiture recovered shall be applied by the county for the relief of discharged convicts.

## CHAPTER 179.

## OF THE STATE PRISON.

## GENERAL PROVISIONS.

## SECTION

1. State prison and penitentiary established.
2. Concurrent jurisdiction of Suffolk and Middlesex.
3. Process, how served within the prison.
4. Governor and council may provide additional cells and buildings;
5. annual visitation by; duties and powers of;
6. may draw warrants for money appropriated.

## OFFICERS AND SALARY.

7. Officers.
8. Appointment, &c., of inspectors;
9. warden, chaplain, physician, and surgeon;
10. deputy-warden and other officers.
11. Warden to report appointments.
12. Officers to have no other business.
13. Salaries of officers, and how paid. No perquisites except, &c.

## INSPECTORS.

- 14, 15. Inspectors, authority and duty of;
16. to examine books, &c., semiannually;
17. to approve bills;
18. to report violations of law, &c., and make detailed report.

## CHAPLAIN.

19. Duty of chaplain.

## PHYSICIAN AND SURGEON.

- 20, 21. Duty of physician and surgeon.
22. Care and treatment of sick convicts.

## WARDEN AND DEPUTY-WARDEN.

23. Warden to give bond.
24. Removal of convicts to state prison.
25. Residence of warden and deputy. Officers to perform duties required by warden, &c.
26. Warden may propose alteration of rules, &c.;
27. to have charge of prisoners, &c.;
28. to have charge of prison, and be treasurer;
29. accounts of, to be settled annually.
30. Duty of deputy in absence, &c., of warden.
31. Power of inspectors as to deputy-warden when the office of warden is vacant. Warden pro tempore.

## CONTRACTS.

32. Contracts made by warden, and approved by inspectors. Suits thereon.
33. Warden may submit controversies to arbitration.
- 34, 35. Contracts, how made. Proposals therefor.

## SECTION

36. Officers not to be interested in contracts, &c.
37. Bills to be taken of all purchases, services, &c.

## DISCIPLINE, &amp;c., OF CONVICTS.

38. Treatment of convicts.
39. Warden's power to maintain order, &c.
40. Convicts, how employed.
41. Solitary labor and corporal punishment.
42. Solitary imprisonment.
43. Sunday school and other instruction.
44. Convicts to be kept separate;
45. interviews of, with their friends;
46. communications between, and friends.
47. Newspapers and visitors.
48. Visitors to have permit;
49. warden to keep register of.
50. Warden may refuse admission to.

## RECORD OF CONDUCT.

51. Record of conduct. Deduction from sentence;
52. to be submitted to governor and council.

## ESCAPES, &amp;c.

53. Punishment for escape, &c., when sentenced for years;
54. when sentenced for life.
55. Punishment of officer, &c., suffering escape;
56. leaving prisoner at large, or other unlawful indulgence;
57. aiding in escape or rescue;
58. illicit conveyance of articles into prison, &c.

## RATIONS, CLOTHING, &amp;c., OF CONVICTS.

59. Warden, &c., to make regulations respecting rations, &c.
60. Subsistence and diet in the hospital.
61. Rations, &c., may be varied, &c.
62. Prison to be ventilated and prisoners furnished with baths.

## DISCHARGED CONVICTS.

63. Convicts when discharged, to be decently clothed, &c.
64. Agent for discharged convicts, appointment and duties of;
65. office of;
66. to keep account of expenditures, and present account, not exceeding \$500, to state auditor;
67. may receive from warden money for discharged convicts;
68. returns of. Salary.

## GENERAL PROVISIONS.

[See 1871, 294.]

SECTION 1. The state prison in Charlestown in the county of Middlesex shall be the general penitentiary and prison of the commonwealth for the reformation as well as for the punishment of male offenders; in which shall be securely confined, employed in hard labor, and governed in the manner hereafter directed, all offenders convicted before any court of this state, or, except as provided in section sixty-one of chap-

State prison  
and peniten-  
tiary estab-  
lished.  
R. S. 142, § 18.  
R. S. 144, §§ 1,  
20.  
1866, 489, § 19.

Recd 1874. 264

See 1869, 384.

Concurrent jurisdiction of Suffolk and Middlesex.  
R. S. 144, § 43.  
11 Pick. 28.

Process, how served within.  
R. S. 144, § 26.

Governor and council may provide additional cells and buildings;  
R. S. 144, § 50.

annual visitation by; duties and power of;  
R. S. 144, § 49.

may draw warrants for money appropriated.  
R. S. 144, § 51.

Officers.  
R. S. 144, §§ 2, 6.  
1860, 289, § 2.  
1862, 242.  
1867, 122, § 1.  
1874, 133

Appointment, &c., of inspectors;  
1850, 87, §§ 1, 2, 3, 4.

warden, chaplain, physician, and surgeon;  
R. S. 144, § 4.

deputy-warden and other officers.  
R. S. 144, § 5.  
1867, 122, § 1.

ter one hundred and forty-four, any court of the United States held within the district of Massachusetts, and sentenced according to law to the punishment of solitary imprisonment and confinement therein at hard labor.

SECT. 2. For the purpose of all judicial proceedings, the prison and precincts thereof shall be deemed to be within and a part of the county of Suffolk as well as the county of Middlesex, and the courts and magistrates of the counties of Suffolk and Middlesex shall have concurrent jurisdiction of all crimes and offences committed within the same.

SECT. 3. All process to be served within the precincts of the prison shall be directed to and served and returned by the warden or his deputy.

SECT. 4. The governor with the advice and consent of the council may from time to time cause additional buildings to be erected, or alterations to be made in the existing buildings of the prison, so that there shall be at all times as many separate cells as there are convicts in the prison. He may in like manner cause such additions or alterations to be made as are found necessary for the accommodation of the officers required by law to reside constantly within the precincts of the prison.

SECT. 5. The prison shall be visited by the governor and council annually, and as much oftener as they may think proper, for the purpose of examining into its concerns and ascertaining its condition. They shall inquire into all alleged abuses or neglects of duty, and may make such alterations in the general discipline of the prison as they find necessary.

SECT. 6. When an appropriation of money is made by the legislature for the support of the prison, the governor with the consent of the council shall draw a warrant in favor of the warden, either for portions thereof from time to time, or for the whole amount at one time, as he thinks proper.

### 1873 & 193 OFFICERS AND SALARIES.

SECT. 7. The officers of the prison shall consist of three inspectors, one warden, one deputy-warden, one chaplain, one physician and surgeon, one clerk, eleven turnkeys, ten permanent watchmen, and as many additional watchmen, not exceeding seven, as the warden and inspectors may find necessary, and as many assistant watchmen, not exceeding five, as the warden may deem necessary.

SECT. 8. The inspectors shall be appointed by the governor with the advice and consent of the council, subject to removal in like manner. Those now in office shall continue so for the terms of their respective appointments unless sooner removed by the governor and council. One inspector shall be appointed annually in April for three years; and the governor shall annually in the same month designate one inspector to act as chairman. Appointments to fill vacancies caused by death, resignation, or removal before the expiration of terms, shall be for the residue only of such terms; and no inspector shall be reappointed until one year after the expiration of his term.

SECT. 9. The warden, chaplain, and physician and surgeon, shall be appointed by the governor with the advice and consent of the council, and commissioned to hold their offices during the pleasure of the executive.

SECT. 10. The deputy-warden and all other officers except the assistant watchmen shall be appointed by the warden, subject to the approval of the inspectors, and shall hold their offices during the pleasure of the warden and inspectors; but if the warden thinks any such officer ought to be removed, and the inspectors do not consent thereto, the warden may appeal to the governor and council, who after reason-

able notice to the inspectors may make such removal. The assistant watchmen shall be appointed by the warden, and shall hold office during his pleasure.

SECT. 11. The warden shall immediately report to the inspectors all appointments made by him.

R. S. 144, § 6.

SECT. 12. Neither the warden nor any officer appointed by the warden and inspectors shall be employed in any business for private emolument, or which does not pertain to the duties of his office.

SECT. 13. The officers of the prison shall receive the following annual salaries, viz.: each inspector, two hundred dollars; the warden, twenty-five hundred dollars; the deputy-warden, fifteen hundred dollars; the chaplain, eleven hundred dollars; the physician and surgeon, seven hundred dollars; the clerk, twelve hundred dollars; each turnkey, eight hundred dollars; each watchman, seven hundred and fifty dollars; and each assistant watchman, six hundred dollars; payable in monthly payments by the warden out of the treasury of the prison, and in full for all services. No other perquisite, reward, or emolument, shall be allowed to or received by any of them, except that there shall be allowed to the warden and deputy-warden sufficient house room with fuel and light for themselves and families.

Warden to report appointments.

Officers to have no other business.  
R. S. 144, § 7.

Salaries of officers, and how paid. No perquisites, except, &c.

R. S. 144, § 8.  
1864, 270, § 1.  
1865, 384, § 1.  
1867, 122, § 2.  
1867, 196, § 1.  
1869, 240.

See 1864, 308, § 2.  
1867, 312.  
1870, 245.  
1871, 301.

#### INSPECTORS.

SECT. 14. The inspectors shall from time to time establish rules and regulations consistent with the laws of the state, for the direction of the officers of the prison in the discharge of their duty, to the government, employment, and discipline, of the convicts, and the custody and preservation of the public property. As soon as may be after the establishment of any such rules and regulations, they shall cause authentic copies thereof to be laid before the governor and council, who may approve, annul, or modify, the same; and the inspectors shall cause a copy of all rules and regulations so approved to be certified as soon as may be by the clerk of the prison and delivered to the warden.

Inspectors, authority and duty of;  
R. S. 144, § 9.

SECT. 15. The inspectors or one of them shall visit the prison at least once in each week, and it shall be visited by the board of inspectors once a month, and oftener if they think necessary, for the purpose of inspecting the books and all the concerns of the prison, and ascertaining whether the laws, rules, and regulations, relating to the prison, are duly observed, the officers competent and faithful, and the convicts properly governed and employed.

same subject;  
R. S. 144, § 10.

SECT. 16. All books and documents relating to the concerns of the prison shall at all times be open to the examination of the inspectors, who shall semiannually carefully examine said books and compare them with the vouchers and documents relating thereto.

to examine books, &c. semiannually;  
R. S. 144, § 17.

SECT. 17. All bills contracted by the warden for purchases on account of the prison, shall be approved by one or more of the inspectors, before payment.

to approve bills;  
1867, 260.

SECT. 18. The inspectors shall forthwith report to the governor and council all violations of law and omissions of duty by the warden, chaplain, or physician and surgeon, coming to their knowledge; and every officer holding his place at the pleasure of the inspectors and warden, found unfaithful or incompetent, or known to use intoxicating liquors as a beverage, shall be by them forthwith removed: the inspectors shall also on or before the fifteenth day of October in each year make a detailed report to the governor and council for the year ending on the last day of the preceding month, stating therein the names of the officers of the prison, with their several salaries, the name of each contractor in the prison, with the number of convicts employed by him, their daily pay, and the amount of their individual earnings, the num-

to report violations of law, &c., and make detailed report.  
R. S. 144, § 11.  
1867, 40.  
1868, 48.  
1868, 162, § 1.  
1869, 155.

See 1864, 308, § 1.

ber of volumes in the prison library, and the cost of each addition to and change in the prison buildings, together with a full statement of all the concerns of the prison.

#### CHAPLAIN.

Duty of chaplain.  
R. S. 144, § 12.  
See 1870, 243, § 1.

SECT. 19. The chaplain shall perform divine service in the chapel of the prison, instruct the convicts in their moral and religious duties, visit the sick on suitable occasions, and devote his whole time to the performance of the duties of his office.

#### PHYSICIAN AND SURGEON.

Duty of physician and surgeon.  
R. S. 144, § 13.  
See 1870, 243, § 2.

SECT. 20. The physician and surgeon shall visit the hospital of the prison at least once in each day, and as much oftener as necessary, prescribe for convicts who are sick, and attend to the regimen, clothing, and cleanliness, of such of them as are in the hospital. He shall keep a regular journal, which shall remain at the prison, of all admissions to the hospital, stating the time of admission, the nature of the disease, his prescriptions, the treatment of each patient, and the time of his discharge from the hospital, or of his death. The journal shall also contain entries of all orders given for supplies for the hospital department, specifying the articles ordered. All such orders shall be in writing, and the warden shall provide the supplies so ordered.

Same subject.  
1859, 254.

SECT. 21. He shall attend upon all insane convicts, and, when in his opinion it can be done without detriment or danger to the other patients or inmates of the prison shall direct their removal to the prison hospital, and see that they have sufficient daily exercise outside their cells or places of confinement.

Care and treatment of sick convicts.  
R. S. 144, § 14.

SECT. 22. When a convict complains of such illness as requires medical aid, notice thereof shall be given to the physician, who shall visit the convict, and if in the opinion of the physician the illness is such as to require his removal to the hospital, the warden may order such removal, and the convict shall remain in the hospital until the physician determines that he may leave it without injury to his health.

#### WARDEN AND DEPUTY-WARDEN.

[See 1864, 307; 1865, 111; 1869, 275.]

Warden to give bond.  
R. S. 144, § 15.

SECT. 23. Before the warden enters upon the duties of his office, he shall give bond to the commonwealth in the sum of twenty thousand dollars, with sufficient sureties to be approved by the governor and council, conditioned that he shall faithfully account for all money placed in his hands as treasurer, and perform all the duties incumbent on him as warden. Such bond with the approval of the sureties indorsed thereon shall be filed in the office of the treasurer of the commonwealth.

Removal of convicts to state prison.  
R. S. 144, § 23.

SECT. 24. When the warden receives a warrant from the sheriff in the manner prescribed in chapter one hundred and seventy-four, requiring him to cause a convict to be removed from the jail to the state prison pursuant to his sentence, he shall by himself or such person as he appoints for the purpose, as soon as may be, cause such warrant to be duly executed, make return of the manner in which he has caused the same to be executed, file the warrant and the return, with the transcript of the record, in his office, and cause an attested copy of the warrant and of his return thereon to be filed in the office of the clerk from whence it was issued. All sheriffs, jailers, and other officers, are enjoined, if need be, to aid the warden or person by him appointed in the execution of such warrant.

Residence of warden and deputy-warden.

SECT. 25. The warden and deputy-warden shall reside constantly within the precincts of the prison; and the deputy-warden, clerk, watch-

men, and assistant watchmen, shall perform such duties in the charge and oversight of the prison, the care of the property thereto belonging, and the custody, government, employment, and discipline, of the convicts, as is required of them by the warden in conformity to law and the rules and regulations of the prison.

SECT. 26. The warden shall from time to time propose in writing to the inspectors, such alterations as he thinks advisable in the rules and regulations for the direction of the officers and the government of the prison.

SECT. 27. He shall have the charge and custody of all convicts in the prison, and shall govern and employ them in the manner prescribed by law and pursuant to their respective sentences and the rules and regulations of the prison, until their sentences are performed or they are otherwise discharged by due course of law.

SECT. 28. He shall have the charge and custody of the prison, with the lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining thereto or within the precincts thereof. He shall be treasurer of the prison, and shall receive and pay out all money granted by the legislature for the support thereof, and shall cause to be kept in suitable books regular and complete accounts of all the property, expenses, income, business, and concerns, of the establishment.

SECT. 29. He shall, as soon as may be after the last day of September in each year, cause to be made full and detailed accounts, to be closed on that day, of all the disbursements, expenses, receipts, and profits, of the prison, accompanied by sufficient vouchers, which accounts after having been examined and approved by the inspectors shall be deposited and filed in the office of the treasurer of the commonwealth, for the inspection of the legislature.

SECT. 30. When the office of warden is vacant, or the warden absent from the prison or unable to perform the duties of his office, the deputy-warden shall have the powers, perform the duties, and be subject to the obligations and liabilities, of the warden.

SECT. 31. If the office of warden becomes vacant when the governor and council are not in session, the inspectors may require the deputy-warden to give a bond to the commonwealth in the sum of ten thousand dollars, with sufficient sureties to be by them approved, conditioned for the faithful performance of the duties incumbent on him as deputy-warden and treasurer until a warden is appointed; and from the time such bond is approved, the deputy shall, so long as he performs the duties of the office, receive the salary of the warden in lieu of his former salary. If the deputy-warden does not give such bond when required, the inspectors may remove him from the office of warden and appoint a warden pro tempore, who shall give such bond and shall have the power and authority, perform the duties, and receive the salary, of the warden, until a warden is duly appointed and enters upon the discharge of the duties of the office.

#### CONTRACTS.

SECT. 32. All contracts on account of the prison shall be made by the warden in writing, and when approved in writing by the inspectors shall be binding; and the warden or his successor may sue or be sued thereon to final judgment and execution. No such suit shall abate by reason of the office of warden becoming vacant, but any successor of the warden, pending such suit, may take upon himself the prosecution or defence thereof, and upon motion of the adverse party and notice he shall be required so to do.

SECT. 33. When a controversy arises respecting any contract made

uty. Officers to perform duties required by warden, &c.  
R. S. 144, § 28.  
1867, 122, § 1.

Warden may propose alteration of rules, &c.;  
R. S. 144, § 6.

to have charge of prisoners, &c.;  
R. S. 144, §§ 25, 30.  
See 1861, 128.

to have charge of prison and be treasurer;  
R. S. 144, § 16.  
See 1864, 308, §§ 2, 8.

accounts of, to be settled annually.  
R. S. 144, § 18.  
See 1870, 364.

Duty of deputy, in absence, &c., of warden.  
R. S. 144, § 26.

Power of inspectors as to deputy-warden when the office of warden is vacant. Warden pro tempore.  
R. S. 144, § 27.

Contracts made by warden and approved by inspectors. Suits thereon.  
R. S. 144, § 19.  
3 Pick. 17.  
9 Pick. 241.  
11 Met. 137.  
11 Cush. 510.  
4 Gray, 586.

Warden may

submit contro-  
versies to arbi-  
tration.  
R. S. 144, § 20.

Contracts, how  
made.  
Proposals  
therefor.  
R. S. 144, § 21.

Same subject.  
R. S. 144, §§ 22,  
23.

Officers not to  
be interested in  
contracts, &c.  
R. S. 144, § 23.

Bills to be taken  
of all purchases,  
services, &c.  
R. S. 144, § 24.

Treatment of  
convicts.  
R. S. 144, § 52.

Warden's power  
to maintain  
order, &c.  
R. S. 144, § 43.

Convicts, how  
employed.  
R. S. 144, § 39.  
1850, 289, § 4.

Solitary labor.  
1850, 289, § 1.

Solitary impris-  
onment.  
R. S. 144, § 32.

1876c. 61

by the warden on account of the prison, or a suit is pending thereon, the warden may submit the same to the final determination of arbitrators or referees to be approved by the inspectors.

SECT. 34. When it can be advantageously done, the principal articles purchased for the use of the prison shall be contracted for by the year. The warden shall give previous public notice, in two newspapers at least, of the articles wanted, the quantity and quality thereof, the time and manner of delivery, and the period during which proposals therefor will be received; which notice shall be published a sufficient time for the information of persons who may desire to offer proposals.

SECT. 35. All such proposals shall be in writing and sealed up, and on the day appointed they shall be opened by the warden in presence of the inspectors, who shall cause them to be entered in a book and compared. The person offering the best terms, with satisfactory security for the performance, shall be entitled to the contract, unless it appears to the warden and inspectors that none of the offers are so low as the fair market price; in which case no offer shall be accepted, and the warden, with the consent of the inspectors, may proceed to make contracts for any of the articles wanted for the prison, in the best way he can for the interest of the commonwealth. Every such contractor shall give bond in a reasonable sum with satisfactory surety or sureties for the performance of his contract.

SECT. 36. No officer of the prison shall be concerned or interested directly or indirectly in any contract, purchase, or sale, made on account of the prison.

SECT. 37. The warden shall take bills of the quantity and price of supplies furnished for the prison, at the time of the delivery; and the clerk, or such officer as the warden directs, shall compare the bills with the articles delivered. If the bills are found correct, he shall enter them with the date upon a book to be kept for the purpose. Bills of all services rendered for the prison shall be taken and entered in like manner. If a bill for supplies or services is discovered to be incorrect, the clerk shall omit to enter it, and immediately give notice to the warden, that the error may be corrected.

#### DISCIPLINE, &c., OF CONVICTS.

SECT. 38. The warden and all officers of the prison shall treat the convicts with kindness, so long as they merit such treatment by their obedience, industry, and good conduct.

SECT. 39. All necessary means shall be used, under the direction of the warden, to maintain order in the prison, enforce obedience, suppress insurrection, and prevent escapes, for which purpose he may at all times require the aid and utmost exertions of all the officers of the institution, the inspectors, chaplain, and physician, excepted.

SECT. 40. Convicts sentenced to the punishment of hard labor in the prison shall be constantly employed for the benefit of the state, but no convict shall be employed in engraving or printing of any kind.

SECT. 41. The warden, with the consent of one or more of the inspectors, may, for such time as they deem necessary to produce penitence, or so long as they think expedient for the promotion of good order and discipline, confine to solitary labor such convicts as are obstinate and refractory.

SECT. 42. Convicts against whom the punishment of solitary imprisonment is awarded by sentence of court, or who are subjected to it for violating any of the rules and regulations of the prison, shall be confined in one of the solitary cells, and during such confinement shall be fed with bread and water only, unless the physician of the prison certifies to the warden that their health requires other diet.



SECT. 43. The warden, with the consent of the inspectors, may cause a Sabbath school to be maintained in the prison, for the instruction of the convicts in their religious duties, and permit such persons as they deem suitable to attend the same as instructors, under such rules and regulations as the inspectors may establish. And the warden and inspectors may furnish suitable instruction in reading and writing for one hour each evening except Sundays, to all such prisoners as may be benefited thereby and desirous to receive the same.

Sunday school and other instruction. 1838, 162, § 8. 1846, 324, § 8. See Ch. 173, § 40. See 1871, 838.

1875, 126

SECT. 44. No communication shall be allowed between the convicts and any person without the prison. They shall be confined in separate cells in the night time, and in the day time all intercourse between them shall, as far as is practicable, be prevented.

Convicts to be kept separate; R. S. 144, § 33. See 1869, 276.

SECT. 45. The inspectors and warden may make such regulations as they think necessary or expedient in relation to interviews of the convicts with their friends from without the prison; during which interviews the convicts and persons in communication with them shall be under the eye of the warden, or of some officer of the prison designated by him.

Interviews of, with their friends. 1851, 295, § 1.

SECT. 46. The warden may at such time and under such circumstances as he deems expedient, with the consent of the inspectors, make known to the convicts the whole or parts of any communications received by him from their friends without the prison, and he may in like manner make known to their friends communications made to him by prisoners.

Communications between, and friends. 1851, 296, § 2.

SECT. 47. The warden and inspectors may adopt such regulations not inconsistent with the laws relating to the government of the prison, in relation to the introduction of newspapers into the prison, and in relation to visitors, as they deem necessary or expedient.

Newspapers and visitors. 1850, 289, § 3.

SECT. 48. No persons other than the executive government of the commonwealth, members of the legislature, officers of justice, or other persons having business at the prison, shall be allowed to visit it without a special permit from one of the inspectors or the warden.

Visitors to have permit; 1854, 302, § 1.

SECT. 49. The warden shall cause a register to be kept of the names and residences of all persons so visiting, and of the authority by which they visit; which register shall at all times be open to the inspectors.

Warden to keep register of. 1854, 302, § 2.

SECT. 50. The warden may refuse admission to any person having a permit, when it appears that such admission would be injurious to the best interests of the prison, but he shall report such refusal to the inspectors at their next monthly meeting.

Warden may refuse admission, &c. 1854, 302, § 3.

#### RECORD OF CONDUCT.

SECT. 51. The warden shall keep a record of the conduct of each convict, and for each month that a convict appears by such record to have faithfully observed all the rules and requirements of the prison and not to have been subjected to punishment, there shall, with the consent of the governor and council, be deducted from the term or terms of his sentence, as follows: from a term of less than three years, one day; from a term of three and less than seven years, two days; from a term of seven and less than ten years, four days; from a term of ten years or more, five days.

Record of conduct. Deduction from sentence. 1857, 294, § 1. 18 Gray, 812.

1876C.23

SECT. 52. Said record and scale of deduction, or any part thereof, shall be submitted by the warden to the governor and council when required by them, that the same may be considered in the exercise of such executive clemency on behalf of any convict, as they may deem conducive to the interests of the prison and promotive of the reformation and welfare of the convicts.

Record to be submitted to governor and council. 1857, 294, § 2.

## ESCAPES, &amp;c.

Punishment for  
escape, &c.,  
when sentenced  
for years;  
R. S. 144, § 37  
5 Allen, 181.  
101 Mass. 228.

873 & 73

When sen-  
tenced for life.  
R. S. 144, § 38.

Punishment of  
officer, &c., suf-  
fering escape;  
R. S. 144, § 39.

Leaving pris-  
oner at large,  
or other unlaw-  
ful indulgence;  
R. S. 144, § 40.

Aiding in es-  
cape or rescue;  
R. S. 144, § 41.

Illicit convey-  
ance of articles  
into prison, &c.  
1859, 152, § 1.

SECT. 53. If a convict under sentence for any limited time escapes from the prison, or attempts by violence to escape, or assaults the warden, an inspector, or other officer or person employed in the government or custody of the prison, he shall, in addition to his former sentence, be punished by imprisonment in said prison not exceeding ten years, and also by solitary imprisonment not exceeding one year, to be executed forthwith, or at such time or times either before or after the expiration of any former sentence, as the court directs.

SECT. 54. If a convict under sentence of imprisonment for life escapes from the prison, or attempts by violence to escape, or commits any such assault as is mentioned in the preceding section, he shall be punished by solitary imprisonment not exceeding one year, to be executed at such time or times as the court directs.

SECT. 55. If an officer or other person employed in the prison voluntarily suffers a convict confined therein to escape, or in any way consents to such escape, he shall be punished by imprisonment in said prison not exceeding twenty years.

SECT. 56. If an officer or person employed in the prison suffers a convict under sentence of solitary confinement to be at large or out of the cell assigned to him, or suffers any convict confined in the prison to be at large out of the prison, or to be visited, conversed with, or in any way relieved or comforted, contrary to the regulations of the prison, he shall be punished by fine not exceeding five hundred dollars.

SECT. 57. Whoever conveys into the prison any disguise, instrument, tool, weapon, or other thing, adapted or useful to aid a convict in making his escape therefrom, with intent to facilitate the escape of any convict there lawfully committed or detained, whether such escape is effected or attempted or not, or by any means aids a convict in his endeavor to escape, and whoever forcibly or fraudulently rescues or attempts to rescue a convict held in custody under sentence of imprisonment in the prison, shall be punished by imprisonment in said prison not exceeding ten years, or by fine not exceeding five hundred dollars.

SECT. 58. Whoever delivers or procures to be delivered, or has in his possession with intent to deliver, to a convict confined in the prison, or deposits or conceals in or about the prison, or the dependencies thereof, or in any boat, carriage, or other thing belonging to the prison, any article confined in the prison shall ob- receives from a convict any article same out of the prison, contrary without the knowledge and permission of the warden and inspectors, shall be punished by imprisonment in said prison not exceeding two years, or by fine not exceeding five hundred dollars.

## RATIONS, CLOTH

Warden, &c., to  
make regula-  
tions respecting  
rations, &c.  
1859, 101.

Subsistence and  
diet in the hos-  
pital.  
R. S. 144, § 46.

SECT. 59. The warden and the governor and council, make such regulations respecting clothing, and bedding, of the circumstances of each convict requiring such clothing and bedding, shall be of good quality and comfortable, and the food and sustenance and comfort of the convicts shall be furnished to the convicts.

SECT. 60. The subsistence and clothing shall be under the direction of the governor and council, and the order therefor shall be in writing, and shall be renewed every week.

SECT. 61. The warden and inspectors may make such variations or additions in relation to the rations, clothing, and bedding, of the convicts, as the circumstances of each convict may require.

SECT. 62. The prison shall be suitably and sufficiently ventilated, and each prisoner shall have a weekly bath of cold or tepid water, which shall be applied to the whole surface of the body, unless, by reason of the sickness of any prisoner, such bath may be hurtful or dangerous.

Rations, &c., may be varied, &c.

Prison to be ventilated and prisoners furnished with baths.  
1848, 824, §§ 1, 2.

DISCHARGED CONVICTS.

[See 1864, 194.]

SECT. 63. The warden may pay to any convict leaving the prison, who in his opinion by good conduct deserves the same, a sum not exceeding five dollars out of the treasury of the prison; and no convict shall leave the prison without being furnished with decent clothing.

SECT. 64. The governor with advice of the council may appoint an agent to hold office until another is appointed in his place, who shall counsel and advise, and when and as he deems proper and expedient, furnish with clothing, board, and tools suitable for their employment, such discharged convicts as may seek his aid; and shall take measures to procure employment for such of them as may desire it, by corresponding with persons in mechanical and agricultural pursuits, and with benevolent persons and associations.

SECT. 65. The office of the agent shall be located either in Charlestown or Boston.

SECT. 66. He shall keep an account of the moneys expended by him for the rent and other necessary expenses of his office, for correspondence and travel to procure employment for discharged convicts, for furnishing the clothing, board, and tools, required of him by law, and for conveying discharged convicts to their homes or places of employment when he deems it proper to pay therefor, which being approved by the auditor of accounts, the governor shall at the end of each quarter draw his warrant on the treasury therefor. But the whole amount so paid for such expenditures shall not exceed five hundred dollars in any one year.

SECT. 67. The warden may in his discretion pay to said agent such sums of money as he is authorized by section sixty-three to pay to convicts. The agent shall expend what he thus receives for the benefit of such convicts, and account therefor to the auditor.

SECT. 68. He shall, on or before the fifteenth day of October in each year, cause to be made to the governor and council a full and detailed account of his doings as such agent for the year ending on the last day of the preceding month, and he shall receive for his services five hundred dollars a year.

Convicts, when discharged, to be decently clothed, &c.  
R. S. 144, § 63.

Agent for discharged convicts, appointment and duties of;  
1845, 176, § 1.  
1849, 82, § 1.

1876 c. 72

office of;  
1845, 176, § 2.

to keep account of expenditures, and present account to state auditor;  
1852, 218, § 2  
1849, 56.  
See 1861, 78, § 1.  
1869, 122.  
1871, 302.

may receive from warden money for discharged convicts;  
1852, 218, § 3.  
returns of.  
Salary.  
1846, 78, § 1.  
1862, 213, § 1.  
1867, 40.  
1868, 48.

See 1861, 78, § 2  
1871, 302, § 2.

1876 c. 72

CHAPTER 180.

OF THE TRANSFER OF LUNATICS AND DISCHARGE OF POOR CONVICTS.

LUNATICS IN THE STATE PRISON.

SECTION

1. Commissioners to examine insane convicts;
2. to be notified by warden, &c., of apparent insanity of convicts.
3. Insane convicts to be removed to hospital, &c.

LUNATICS IN OTHER PRISONS.

4. Insane persons in prison, how removed to hospital;
5. if sane before term expires, to be returned.

DISCHARGE OF POOR CONVICTS.

SECTION

6. Poor convicts, how discharged from prison after three months;
7. after thirty days;
8. at any time in the county of Suffolk, when, &c.
9. Persons under guardianship, how discharged.
10. Fine and cost may be recovered of guardian.
11. Fees for discharge under this chapter.

## LUNATICS IN THE STATE PRISON.

Commission-  
ers.  
1844, 120, § 3.  
1856, 186;  
See 1862, 8.

to be notified  
by warden, &c.,  
of insanity of  
convicts.  
1844, 120, § 1.

Insane convicts  
to be removed  
to hospital, &c.  
1844, 120, §§ 1, 2.  
1853, 318, § 1.  
1856, 247, § 3.

SECTION 1. The physician of the state prison as chairman, with the superintendents of the state lunatic hospitals, shall constitute a commission for the examination of convicts in said prison alleged to be insane. Each commissioner shall receive for his services in such capacity his travelling expenses and three dollars a day for each day he is so employed, which shall be charged to the prison.

SECT. 2. When a convict in the prison appears to be insane, the warden or inspectors shall give notice thereof to the chairman of said commission, who shall forthwith notify the members thereof to meet at the prison.

SECT. 3. The commission shall investigate the case, and if, in the opinion of a majority of them, the convict has become insane, and his removal would be expedient, they shall so report, with their reasons, to a judge of the superior court, who shall forthwith issue his warrant under the seal of that court, directed to the warden, authorizing him to remove the convict to one of the state lunatic hospitals, there to be kept till, in the opinion of the superintendent and trustees thereof, he may be recommitted consistently with his health. The superintendent when so satisfied shall certify the fact of such restoration upon the warrant, and give notice to the warden, who shall thereupon cause the convict to be reconveyed to the prison, there to remain pursuant to his original sentence, computing the time of his confinement in the hospital as part of the term of his imprisonment.

## LUNATICS IN OTHER PRISONS.

Insane prisoners,  
how removed to  
hospital;  
R. § 145, § 1.  
1853, 259.  
1853, 318, § 1.  
1855, 449.  
1856, 247, § 3.  
See 1864, 238,  
§ 10.  
12 Allen, 510.

If sane before  
term expires, to  
be returned.  
R. § 145, § 2.  
1853, 259.

SECT. 4. When a convict in a prison other than the state prison, or in the house of correction, appears to be insane, the physician attending the prison or house of correction shall make a report thereof to the jailer or master, who shall transmit the same in the county of Suffolk to a judge of the superior court, and in any other county to the judge of the probate court. The judge shall make inquiry into the facts therein stated, and if satisfied that such convict is insane, he may, at any time he deems necessary, cause such prisoner to be removed to one of the state lunatic hospitals.

SECT. 5. If a person so removed is restored to sanity before the expiration of his sentence, he or house of correction from w suant to his original sentence, in the hospital as part of the

## DISCHARGE.

Poor convicts,  
how discharged  
from prison;  
R. § 145, § 3.  
1833, 81, § 3.  
1848, 32, § 26.  
1856, 158, § 3.  
8 Gray, 386.  
See 1866, 284.

after thirty  
days.

SECT. 6. When a poor cor of correction for three months them, the jailer or master sha Suffolk to the police court of to any two justices of the pea to any police court. The cou into the truth thereof, and ma convict before them at the pri thereto as they may direct. If is true and that the convict si real or personal, with which h committed, and that he is hel certificate thereof to the sheri

SECT. 7. (R.) [When a poe house of correction thirty days

dollars, or forty days for fine, or fine and cost, not exceeding twenty dollars, he shall be discharged if the justice or court has certified on the mittimus upon which he was committed that he is unable to pay the same. When such convict has been confined thirty days and the justice or court has not so certified, the jailer or master shall make report thereof to a justice of the peace and of the quorum, or to a police court, and such justice or court shall proceed therein and may discharge the convict in the manner prescribed in the preceding section.]

SECT. 8. (R.) [The justices of the police court of the city of Boston when assembled, may also at any time discharge from prison or the house of correction in the county of Suffolk, any convict held only for the non-payment of fine and costs, if it appears that he is poor and unable to pay the same: *provided*, that when such person is held under the sentence of any other court, the consent of one of the justices thereof shall be first given in writing.]

1842, 59.  
(R.) For repeal and substitute see 1866, 44.  
Poor convicts in Suffolk county. R. S. 87, § 16.  
(R.) Repealed by 1866, 238.

SECT. 9. A person under guardianship may have the benefit of the provisions of the three preceding sections, although it appears that he has property held under guardianship, if it also appears that such property is beyond his actual control.

Persons under guardianship, how discharged. 1850, 186, § 1.

SECT. 10. When a person is discharged under the preceding section, the commonwealth may, in an action of tort brought within one year after the discharge, recover against his guardian, if he has assets, the amount of fine and costs remaining unpaid.

Fine and costs may be recovered of guardian. 1850, 186, § 2. 1862, 312.

SECT. 11. The fees of the justices for discharging a convict under this chapter, shall be one dollar to each justice, and for travel five cents for each mile going and returning, which shall be taxed, allowed, and paid, in the same manner as other costs arising before justices of the peace in criminal cases.

Fees for discharge. R. S. 145, § 4.

# PART V.

## OF THE GENERAL STATUTES AND THE REPEAL OF EXISTING LAWS.

CHAPTER 181. — Of the General Statutes and their Effect.

CHAPTER 182. — Of the Express Repeal of existing Laws.

### CHAPTER 181.

#### OF THE GENERAL STATUTES AND THEIR EFFECT.

##### SECTION

1. General Statutes, how cited ;
2. when to take effect ;
3. repeal by, not to revive former laws, &c. ;
4. not to affect acts done, &c. ;
5. nor penalties and forfeitures, &c., except, &c.

##### SECTION

6. Repeal by General Statutes not to affect suits commenced, &c.
7. Periods of limitation to continue to run.
8. Tenure of offices preserved.
9. General Statutes to be construed as continuation of former laws.

General Statutes, how cited ;  
R. S. 146, § 2.

when to take effect ;  
R. S. 146, § 1.

repeal by, not to revive former laws, &c.  
R. S. 146, §§ 3, 9.  
See 1889, 410.

not to affect acts done, &c. ;  
R. S. 146, § 5.  
18 Pick. 419, 522  
20 Pick. 99.  
21 Pick. 112, 210  
23 Pick. 280.  
4 Gray, 490.

nor penalties or forfeitures, &c., except, &c. ;  
R. S. 146, § 6.

nor suits commenced, &c.  
R. S. 146, § 7.

SECTION 1. This act shall not designate as the General Statutes of the chapter and section.

SECT. 2. The General Statutes shall have operation from and after the third hundred and sixty.

SECT. 3. The repeal of the resolves, revised and reenacted hereof, shall not revive any law or any office heretofore abolished.

SECT. 4. It shall not affect accrued, or established, or any confirmed, or any suit or process before the repeal takes effect, but shall necessary conform to the provisions of the act.

SECT. 5. It shall not affect any judgment pronounced after said act takes effect, under any of the provisions of the act, or forfeiture of General Statutes, such provisions shall be construed as continuation of former laws.

SECT. 6. It shall not affect the time of the repeal for an offense committed, or penalty or forfeiture incurred,

that the proceedings therein shall when necessary conform to the provisions of the General Statutes.

SECT. 7. When a limitation or period of time prescribed in any of the acts repealed, for acquiring a right, or barring a remedy, or any other purpose, has begun to run, and the same or similar limitation is prescribed in the General Statutes, the time of limitation shall continue to run, and shall have like effect as if the whole period had begun and ended under the operation of the General Statutes.

Periods of limitation to continue to run.  
1836, 7, § 4.

SECT. 8. All persons who at the time when said repeal takes effect hold any office under any of the acts repealed, shall continue to hold the same according to the tenure thereof, except those offices which have been abolished, and those as to which a different provision is made by the General Statutes.

Tenure of offices preserved.  
E. S. 146, § 8.

SECT. 9. The provisions of the General Statutes so far as they are the same as those of existing laws, shall be construed as a continuation of such laws, and not as new enactments, and references in laws not repealed, to provisions of laws incorporated into the General Statutes and repealed, shall be construed as applying to the same provisions so incorporated.

General Statutes to be construed as continuation of former laws.

## CHAPTER 182.

### OF THE EXPRESS REPEAL OF EXISTING LAWS.

The following entitled acts and resolves passed in the several year. hereinafter enumerated shall be expressly repealed from and after the day specified in section two of chapter one hundred and eighty-one, subject to all provisions contained in said chapter.

#### One Thousand Eight Hundred and Eleven.

Chapter 64. Resolve for paying the expense of music when the commander-in-chief shall order out an escort.

#### One Thousand Eight Hundred and Nineteen.

Chapter 268. Resolve directing officers of government to render annual accounts.

#### One Thousand Eight Hundred and Twenty-two.

Chapter 28. Resolve authorizing the governor to sell or exchange certain military stores.

#### One Thousand Eight Hundred and Thirty-five.

Revised Statutes. An act for revising and consolidating the general statutes of the commonwealth.

#### One Thousand Eight Hundred and Thirty-six.

- Chapter 4. An act to amend the Revised Statutes and to supply certain omissions therein.
- Chapter 24. An act to provide for the engrossing of resolves.
- Chapter 41. An act authorizing registers of probate to adjourn courts of probate in certain cases.
- Chapter 137. An act concerning the returns of county commissioners.
- Chapter 223. An act to provide for the confinement of idiots and insane persons.
- Chapter 240. An act to prevent fraud in the pressing of hay.
- Chapter 241. An act requiring returns from registers of deeds.
- Chapter 245. An act to provide for the better instruction of youth employed in manufacturing establishments.
- Chapter 247. An act relating to the pay of the watchman of the state house.
- Chapter 248. An act to establish jail limits in the county of Worcester.
- Chapter 258. An act in addition to the one hundred and forty-fourth chapter of the Revised Statutes "of the state prison and the government and discipline thereof."
- Chapter 268. An act relating to the increased capital of banks.

- Chapter 278. An act to abolish special pleading in civil actions.
- Chapter 275. An act relating to certain courts in the county of Middlesex.
- Chapter 277. An act concerning jailers' fees.
- Chapter 278. An act concerning county commissioners.
- Chapter 279. An act relating to contracts for the sale of stocks.

### One Thousand Eight Hundred and Thirty-seven.

- Chapter 13. An act relating to the salary of the sergeant-at-arms.
- Chapter 22. An act concerning pilotage in New Bedford and Fairhaven.
- Chapter 53. An act relating to town meetings.
- Chapter 54. An act relating to the effects of deceased paupers.
- Chapter 56. An act relating to unclaimed dividends and balances.
- Chapter 65. An act relating to the form of bank returns.
- Chapter 78. An act to increase the number of justices of the supreme judicial court.
- Chapter 86. An act concerning the assessment of taxes.
- Chapter 89. An act in addition to an act relating to certain courts in the county of Middlesex.
- Chapter 97. An act to increase the salaries of the judge and register of probate for the county of Nantucket.
- Chapter 98. An act to establish probate courts in the town of Provincetown.
- Chapter 111. An act in relation to the inspection of nails.
- Chapter 141. An act to establish the terms of the court of probate in the county of Worcester.
- Chapter 146. An act relating to the meetings of the county commissioners in the county of Berkshire.
- Chapter 151. An act concerning county commissioners.
- Chapter 157. An act relating to police courts.
- Chapter 158. An act concerning the inspection of salt.
- Chapter 164. An act concerning private ways.
- Chapter 166. An act to regulate the weight of fish.
- Chapter 167. An act relating to the salary of the secretary's second permanent clerk.
- Chapter 168. An act relating to the salary of the treasurer's second permanent clerk.
- Chapter 171. An act relating to guardians.
- Chapter 176. An act relating to the powers of assessors.
- Chapter 177. An act to prevent bonfires and false alarms of fire.
- Chapter 178. An act in relation to the poor of unincorporated places.
- Chapter 179. An act concerning gaming.
- Chapter 180. An act empowering proprietors of real estate held in common to dispose of the same.
- Chapter 181. An act in relation to conditional pardons.
- Chapter 185. An act relating to notices of applications for the appraisal and sale of personal property attached on ~~main~~ process.
- Chapter 186. An act to establish a registry of deeds for the southern towns in the county of Bristol.
- Chapter 194. An act providing for a return by overseers of the poor.
- Chapter 198. An act concerning persons imprisoned for debt, and relating to bail.
- Chapter 200. An act relating to the meetings of the Norfolk county commissioners.
- Chapter 205. An act concerning the state prison, and the government and discipline thereof.
- Chapter 207. An act relating to the appointment of provers of fire-arms.
- Chapter 210. An act concerning the service of writs.
- Chapter 217. An act concerning rogues and vagabonds.
- Chapter 221. An act to restore the trial by jury on questions of personal freedom.
- Chapter 224. An act to restrain banks from issuing their notes otherwise than for immediate circulation.
- Chapter 226. An act concerning railroad corporations.
- Chapter 227. An act concerning the returns of common schools.
- Chapter 228. An act concerning lunatics.
- Chapter 233. An act concerning auctioneers.
- Chapter 236. An act concerning depositions.
- Chapter 239. An act to reduce the rate of damages on inland bills of exchange.
- Chapter 240. An act concerning the militia.
- Chapter 241. An act relating to common schools.
- Chapter 242. An act concerning licensed houses and the sale of intoxicating liquors.
- Chapter 244. An act concerning the public health.

### One Thousand Eight Hundred and Thirty-eight.

- Chapter 2. An act relating to wills of personal estate.
- Chapter 21. An act concerning juries.
- Chapter 26. An act relating to the probate court in the county of Nantucket.
- Chapter 28. An act relating to the partition of real estate.
- Chapter 30. An act relating to repairs of highways.
- Chapter 31. An act relating to commitments to the state lunatic hospital.
- Chapter 42. An act to authorize justices of the peace, and others, to compel the attendance of witnesses.
- Chapter 43. An act to provide for the appointment of temporary town treasurers and collectors of taxes.
- Chapter 46. An act concerning the election of parish officers.
- Chapter 54. An act relating to the probate courts in the county of Suffolk.
- Chapter 55. An act to defray the expenses of the board of education.
- Chapter 68. An act to increase the salaries of the judge and register of probate for the county of Dukes County.



- Chapter 71. An act to empower the town of Nantucket to raise money for the payment of county expenses and for other purposes.
- Chapter 73. An act in addition to an act to provide for the confinement of idiots and insane persons.
- Chapter 80. An act to provide for the appointment of additional watchmen for the protection of the state house.
- Chapter 92. An act relating to the composition of debts by executors and administrators.
- Chapter 98. An act concerning the ownership of shares in corporations.
- Chapter 99. An act authorizing railroad corporations to make certain contracts.
- Chapter 100. An act concerning the reports of the decisions in the supreme judicial court.
- Chapter 104. An act to exempt towns and other corporations from liability for damages in certain cases.
- Chapter 105. An act concerning schools.
- Chapter 107. An act in addition to an act to provide for the better instruction of youth employed in manufacturing establishments.
- Chapter 108. An act authorizing banks to surrender their charters.
- Chapter 110. An act to protect the shell fishery in Chelsea.
- Chapter 113. An act for the protection of the shell fishery in Ipswich.
- Chapter 121. An act concerning writs and absent defendants.
- Chapter 143. An act for the protection of camp meetings against disturbance.
- Chapter 144. An act relating to the compensation of executors and administrators.
- Chapter 145. An act for an allowance to widows of deceased persons for necessaries.
- Chapter 147. An act concerning police courts and the justices' court in the county of Suffolk.
- Chapter 152. An act concerning the state prison, and the government and discipline thereof.
- Chapter 154. An act to aid in support of common schools among certain tribes of Indians in this commonwealth.
- Chapter 159. An act to prescribe the duties and fix the compensation of the secretary of the board of education.
- Chapter 162. An act concerning masters in chancery.
- Chapter 168. An act for the relief of insolvent debtors and for the more equal distribution of their effects.
- Chapter 165. An act to enlarge the jurisdiction of the court of common pleas.
- Chapter 177. An act concerning manufacturing corporations.
- Chapter 181. An act in addition to an act to establish the city of Lowell.
- Chapter 184. An act concerning suits on probate bonds.
- Chapter 186. An act concerning the attachment of real estate.
- Chapter 189. An act concerning the union of school districts.
- Chapter 190. An act concerning the sale of the real estate of minors.
- Chapter 196. An act concerning banks and banking.

### One Thousand Eight Hundred and Thirty-nine.

- Chapter 16. An act concerning the establishment of limits for the jail yard at Lowell in the county of Middlesex.
- Chapter 27. An act providing for the examination of banks whose charters have been annulled.
- Chapter 28. An act concerning the office of attorney-general.
- Chapter 30. An act regulating appeals of persons adjudged to be common and notorious thieves.
- Chapter 31. An act for the punishment of shop-breaking in certain cases.
- Chapter 42. An act concerning elections.
- Chapter 53. An act concerning dealers in second-hand articles.
- Chapter 54. An act concerning riots.
- Chapter 56. An act concerning schools.
- Chapter 76. An act relating to proceedings of county commissioners.
- Chapter 84. An act for the protection of the shell fishery in Brewster.
- Chapter 85. An act concerning the sea-coast fisheries.
- Chapter 89. An act concerning the attachment of real estate.
- Chapter 90. An act relating to the powers of county commissioners.
- Chapter 98. An act establishing fees of notaries public.
- Chapter 98. An act in relation to contribution among devisees.
- Chapter 107. An act concerning testimony in certain cases.
- Chapter 117. An act establishing additional terms of the court of common pleas in the county of Middlesex.
- Chapter 121. An act concerning notes payable on demand.
- Chapter 127. An act for the punishment of highway robbery and burglary.
- Chapter 123. An act further regulating the inspection of pickled fish.
- Chapter 125. An act relating to criminal prosecutions.
- Chapter 133. An act concerning the salary of the attorney of the commonwealth for the county of Suffolk.
- Chapter 137. An act concerning district schools.
- Chapter 138. An act to regulate fire departments.
- Chapter 139. An act concerning the assessment of taxes.
- Chapter 140. An act concerning the taking of depositions to perpetuate testimony.
- Chapter 142. An act providing for the appointment of public administrators.
- Chapter 144. An act concerning taxes for the repairs of highways.
- Chapter 146. An act concerning houses of correction.
- Chapter 148. An act to prevent the burning of woodlands in certain towns therein named.
- Chapter 149. An act in addition to an act concerning lunatics.
- Chapter 150. An act relating to the courts of common pleas in the county of Essex.
- Chapter 151. An act concerning proceedings at law.
- Chapter 156. An act concerning the maintaining of prisoners in jails and houses of correction.
- Chapter 157. An act to provide for obtaining the statistics of crime.
- Chapter 158. An act concerning suits against foreign corporations.

- Chapter 161. An act concerning appeals in criminal cases.
- Chapter 164. An act relative to the partition of real estate.
- Chapter 165. An act in addition to an act concerning elections.

### One Thousand Eight Hundred and Forty.

- Chapter 9. An act for the protection of the shell fishery in the towns of Essex and Hall.
- Chapter 12. An act relating to turnpike corporations.
- Chapter 15. An act concerning jails and houses of correction.
- Chapter 23. An act concerning the jurisdiction of justices of the peace.
- Chapter 34. An act to protect Indian lands from trespassers and intruders.
- Chapter 40. An act in addition to an act providing for the appointment of public administrators.
- Chapter 59. An act concerning the apportionment of the senate.
- Chapter 61. An act regulating the use of proxies at the meetings of stockholders of banks.
- Chapter 62. An act concerning the proprietors of meeting-houses.
- Chapter 63. An act relating to representative districts.
- Chapter 69. An act concerning toll-bridges.
- Chapter 73. An act relating to the inspection of mess beef.
- Chapter 74. An act concerning grand jurors in the county of Dukes County.
- Chapter 75. An act concerning the apprehension of criminals.
- Chapter 77. An act in addition to an act relating to the meetings of the county commissioners in the county of Berkshire.
- Chapter 80. An act concerning passenger carriers.
- Chapter 82. An act relating to the sale of Indian meal and cracked corn.
- Chapter 88. An act concerning certain railroad corporations.
- Chapter 84. An act relating to the evidence of marriage.
- Chapter 85. An act in addition to an act concerning railroad corporations.
- Chapter 87. An act concerning the supreme judicial court and the court of common pleas.
- Chapter 92. An act in addition to the several acts concerning the militia.
- Chapter 94. An act in addition to an act for the appointment of bank commissioners.
- Chapter 97. An act concerning sales by guardians and others.

### One Thousand Eight Hundred and Forty-one.

- Chapter 1. An act relating to the choice of county commissioners in the county of Barnstable.
- Chapter 17. An act concerning the income of the Massachusetts school fund.
- Chapter 18. An act in relation to the erection and regulation of mills.
- Chapter 20. An act in addition to an act relating to the evidence of marriage.
- Chapter 26. An act concerning timber carried upon adjoining lands by floods.
- Chapter 33. An act in relation to recompense to prosecutors and officers.
- Chapter 44. An act concerning savings banks.
- Chapter 45. An act relating to pilotage.
- Chapter 55. An act in addition to an act concerning the supreme judicial court and the court of common pleas.
- Chapter 69. An act concerning the returns of railroad corporations.
- Chapter 70. An act concerning elections.
- Chapter 74. An act relative to the cost and expenses of criminal prosecutions.
- Chapter 77. An act concerning lunatics.
- Chapter 83. An act to punish collusion in cases of divorce.
- Chapter 86. An act concerning complaints for damages caused by mill-dams.
- Chapter 106. An act concerning the expense of making highways.
- Chapter 106. An act concerning the militia.
- Chapter 107. An act concerning the election of county commissioners.
- Chapter 111. An act relating to the court of common pleas.
- Chapter 113. An act in addition to an act authorizing banks to surrender their charters.
- Chapter 114. An act concerning cemeteries.
- Chapter 115. An act in relation to main drains or common sewers.
- Chapter 118. An act concerning returns by overseers of the poor.
- Chapter 119. An act providing for the measuring of upper leather.
- Chapter 124. An act in addition to an act for the relief of insolvent debtors.
- Chapter 125. An act relating to railroads.
- Chapter 126. An act requiring county commissioners to furnish blank returns of elections.
- Chapter 127. An act respecting the taxation of houses of public worship.
- Chapter 129. An act in relation to bills of discovery.
- Chapter 130. An act relating to the state house.

### One Thousand Eight Hundred and Forty-two.

- Chapter 1. An act to alter the times of holding the May and September meetings of the county commissioners of Berkshire.
- Chapter 10. An act for the protection of the shell fishery in the towns of Kingston and Falmouth.
- Chapter 14. An act concerning petitions for partition.
- Chapter 15. An act relating to allowance to be made to widows and minor children of deceased persons.
- Chapter 22. An act relative to railroads.

- Chapter 34. An act in relation to the collection of taxes.
- Chapter 37. An act authorizing the appointment of special constables.
- Chapter 42. An act concerning the duties of the secretary of the board of education.
- Chapter 49. An act relating to bank returns.
- Chapter 50. An act concerning the election of county commissioner.
- Chapter 54. An act concerning writs of error in criminal cases.
- Chapter 59. An act relating to poor convicts.
- Chapter 60. An act concerning the employment of children in manufacturing establishments.
- Chapter 66. An act in relation to toll-bridges.
- Chapter 67. An act concerning the taxation of costs in actions.
- Chapter 73. An act concerning dower.
- Chapter 74. An act concerning devises and wills by married women.
- Chapter 83. An act concerning guardianship of minors.
- Chapter 86. An act relating to the duties of county commissioners.
- Chapter 88. An act relating to the probate court in the county of Bristol.
- Chapter 89. An act relating to surviving of actions.
- Chapter 91. An act relating to trustee process.
- Chapter 98. An act in addition to the several acts concerning the militia.
- Chapter 94. An act in relation to law library associations.
- Chapter 96. An act concerning the state lunatic hospital.
- Chapter 98. An act concerning an allowance of interest by banks to the city of Boston.
- Chapter 99. An act to divide the commonwealth into districts for the choice of representatives in the congress of the United States.
- Chapter 100. An act in addition to an act to provide for the confinement of idiots and insane persons.
- Chapter 101. An act relating to the bank commissioners.

### One Thousand Eight Hundred and Forty-three.

- Chapter 1. An act to punish larceny in a dwelling-house in the night time and for other purposes.
- Chapter 4. An act relating to the probate court in the county of Nantucket.
- Chapter 7. An act relating to the court of common pleas and municipal court of the city of Boston.
- Chapter 9. An act establishing the salaries of certain public officers.
- Chapter 10. An act relating to the preservation of the bonds and mortgages from the several railroads to the commonwealth.
- Chapter 13. An act to reduce the expenses of the office of adjutant-general.
- Chapter 17. An act relating to the office of adjutant-general.
- Chapter 19. An act relating to trusts created by deed.
- Chapter 21. An act concerning the sale of railroad stock at auction.
- Chapter 29. An act concerning probate courts in the county of Hampden.
- Chapter 33. An act in relation to the subsistence of convicts in the state prison.
- Chapter 40. An act concerning the probate courts in the county of Hampshire.
- Chapter 41. An act relating to the court of common pleas.
- Chapter 55. An act relating to costs in civil actions.
- Chapter 56. An act concerning sureties in probate bonds.
- Chapter 61. An act in addition to an act entitled an act relating to the court of common pleas and municipal court of the city of Boston.
- Chapter 65. An act to establish an aqueduct for the state lunatic hospital (except section one).
- Chapter 66. An act in relation to the support of convicts.
- Chapter 68. An act concerning proxies.
- Chapter 69. An act further to protect personal liberty.
- Chapter 71. An act in relation to fees of justices of the peace.
- Chapter 72. An act concerning mortgages of personal property.
- Chapter 75. An act regulating the compensation of sheriffs.
- Chapter 77. An act relating to divorce.
- Chapter 80. An act concerning the additional punishment of convicts recommitted to the state prison.
- Chapter 82. An act authorizing trustees to insure property held in trust in mutual fire insurance companies.
- Chapter 84. An act in addition to the several acts concerning the militia.
- Chapter 85. An act concerning the property of common school districts.
- Chapter 87. An act relating to the poll tax.
- Chapter 92. An act concerning foreign wills.
- Chapter 98. An act to regulate banks and banking.
- Chapter 97. An act concerning executors and administrators.
- Chapter 98. An act for the more equal assessment of taxes.
- Chapter 99. An act abolishing the office of attorney-general.

### One Thousand Eight Hundred and Forty-four.

- Chapter 9. An act relating to masters in chancery.
- Chapter 24. An act restoring the salaries of the justices of the supreme judicial court.
- Chapter 32. An act concerning the powers of school committees.
- Chapter 36. An act concerning the sale of the stock of manufacturing companies.

- Chapter 44. An act in addition to an act relating to the court of common pleas and the municipal court of the city of Boston.
- Chapter 78. An act relating to elections.
- Chapter 87. An act relating to the statistics of crime.
- Chapter 88. An act respecting the appropriation of the property of minors to their maintenance and education.
- Chapter 90. An act to reduce the tax on sales of teas by importers at auction.
- Chapter 101. An act in addition to the several acts concerning the militia.
- Chapter 102. An act concerning prosecutions for the sale of spirituous and fermented liquors.
- Chapter 104. An act in relation to the registry of deeds.
- Chapter 107. An act to prevent frauds in the conveyance of real estate.
- Chapter 115. An act concerning the settlement of estates of persons deceased insolvent.
- Chapter 120. An act entitled an act for the removal of insane convicts from the state prison.
- Chapter 127. An act to alter the times of holding probate courts in the town of Medway, in the county of Norfolk.
- Chapter 129. An act concerning alimony.
- Chapter 138. An act in addition to an act concerning masters in chancery.
- Chapter 142. An act concerning the organization of the house of representatives.
- Chapter 145. An act relating to the poll tax.
- Chapter 146. An act in addition to an act providing for a return by the overseers of the poor.
- Chapter 147. An act in addition to an act providing for the more equal assessment of taxes.
- Chapter 148. An act in addition to an act entitled "an act concerning mortgages of personal property."
- Chapter 152. An act empowering the inhabitants of villages or districts to establish fire departments within the same.
- Chapter 153. An act concerning the journals and files of the senate and house of representatives.
- Chapter 156. An act for the preservation of grouse or heath hen.
- Chapter 157. An act in addition to "an act in relation to law library associations."
- Chapter 159. An act relating to the registry and returns of births, marriages, and deaths.
- Chapter 160. An act making further provision for the observance of the Lord's day.
- Chapter 162. An act in further addition to "an act concerning the supreme judicial court and the court of common pleas."
- Chapter 167. An act prescribing the time for making the returns of votes for electors of president and vice-president of the United States.
- Chapter 168. An act relating to the bonds of pilots.
- Chapter 171. An act to alter the times of holding the terms of the court of common pleas for the county of Hampden.
- Chapter 173. An act authorizing the appointment of an additional master in chancery in the county of Worcester.
- Chapter 174. An act to establish the salary of the sergeant-at-arms.
- Chapter 178. An act in further addition to the several acts for the relief of insolvent debtors and the more equal distribution of their effects.

### One Thousand Eight Hundred and Forty-five.

- Chapter 14. An act establishing the salary of the district-attorney for the southern district of this commonwealth.
- Chapter 22. An act authorizing the appointment of an additional master in chancery in the county of Middlesex.
- Chapter 27. An act to punish unlawful attempts to cause abortion.
- Chapter 28. An act to punish larceny in shops and other places in the night time.
- Chapter 36. An act establishing the salary of the district-attorney for the northern district.
- Chapter 64. An act concerning trust estates.
- Chapter 67. An act to increase the duties and establish the salary of the attorney of the commonwealth for the county of Suffolk.
- Chapter 68. An act to amend an act concerning notes payable on demand.
- Chapter 70. An act requiring constables to give bonds in certain cases.
- Chapter 73. An act to change the time for holding certain probate courts in the county of Plymouth.
- Chapter 77. An act to amend an act in addition to the several acts concerning the militia.
- Chapter 78. An act concerning limited partnerships.
- Chapter 106. An act establishing the salaries of the first and second clerks in the office of the treasurer and receiver-general of the commonwealth.
- Chapter 112. An act establishing the salaries of the first and second clerks in the office of the secretary of the commonwealth.
- Chapter 116. An act establishing the salary of the messenger to the governor and council.
- Chapter 118. An act concerning the punishment of convicts.
- Chapter 126. An act establishing the salaries of the judge and register of probate for the county of Nantucket.
- Chapter 155. An act to increase the number of justices of the court of common pleas.
- Chapter 158. An act authorizing judges of probate to appoint trustees in certain cases.
- Chapter 160. An act establishing the salary of the register of probate for Dukes County.
- Chapter 162. An act in relation to the compensation of sheriffs.
- Chapter 168. An act concerning bail in criminal cases.
- Chapter 176. An act relating to discharged convicts.
- Chapter 178. An act to establish the salary of the judge of probate in the county of Barnstable.
- Chapter 187. An act concerning pilots and pilotage.
- Chapter 188. An act in relation to the costs of trustees.
- Chapter 190. An act relating to returns of clerks of manufacturing corporations.
- Chapter 191. An act to regulate the use of railroads.

- Chapter 192. An act relating to the survey of the coast of Massachusetts.
- Chapter 198. An act concerning principals, factors, and agents.
- Chapter 197. An act regulating the use of steam-engines and furnaces.
- Chapter 206. An act concerning registers of deeds.
- Chapter 206. An act to establish the salaries of the assistant watchmen of the state house.
- Chapter 208. An act in addition to the several acts concerning husband and wife.
- Chapter 209. An act concerning the laying out turnpike roads as common highways.
- Chapter 211. An act relating to gaming.
- Chapter 218. An act relating to religious societies.
- Chapter 214. An act concerning public schools.
- Chapter 216. An act relating to emblesement.
- Chapter 216. An act to punish abduction.
- Chapter 217. An act providing in certain cases for the election of city officers.
- Chapter 221. An act concerning the duties of county commissioners.
- Chapter 222. An act concerning marriage.
- Chapter 227. An act concerning the fees of jurors in criminal trials.
- Chapter 227. An act concerning fire districts.
- Chapter 242. An act concerning the study of medicine.
- Chapter 243. An act in addition to the several acts concerning the militia.
- Chapter 268. An act to establish additional terms of the court of common pleas for the county of Hampden.
- Chapter 12. Resolves concerning the arsenals in Cambridge and Boston.
- Chapter 71. Resolve concerning the distribution of equipments and camp equipage.
- Chapter 126. Resolve relative to the transmission of military documents.

### One Thousand Eight Hundred and Forty-six.

- Chapter 11. An act to provide for the government and management of houses of correction in certain cases.
- Chapter 40. An act to limit writs of *scire facias* against trustees.
- Chapter 46. An act concerning manufacturing corporations.
- Chapter 49. An act respecting the yearly abstracts of the returns of savings banks.
- Chapter 62. An act concerning wilful and malicious injuries to personal property in certain cases.
- Chapter 62. An act concerning prosecutions for violations of by-laws.
- Chapter 78. An act in addition to an act relating to discharged convicts.
- Chapter 86. An act concerning annual returns of savings banks and institutions for savings.
- Chapter 88. An act relating to the support of convicts.
- Chapter 94. An act respecting corporations for mutual improvement and the promotion of education.
- Chapter 96. An act relating to the erection of furnaces for the making of glass.
- Chapter 99. An act to establish teachers' institutes.
- Chapter 122. An act concerning bonds given on dissolving attachments.
- Chapter 123. An act providing for the appointment of assayers of ores and metals.
- Chapter 123. An act providing for a recompense to prosecutors and officers in certain cases.
- Chapter 154. An act in relation to the house of correction and asylum for insane persons in the county of Essex.
- Chapter 163. An act in addition to "an act for the relief of insolvent debtors and for the more equal distribution of their effects."
- Chapter 170. An act in addition to "an act regulating the inspection of pickled fish."
- Chapter 171. An act concerning larceny by bank officers and persons employed in banks.
- Chapter 198. An act to alter the times of holding the terms of the court of common pleas for the county of Hampshire.
- Chapter 196. An act concerning the collection of taxes.
- Chapter 197. An act concerning marriage and divorce.
- Chapter 196. An act concerning proceedings in criminal cases.
- Chapter 199. An act concerning usury.
- Chapter 200. An act for the suppression of horse-racing.
- Chapter 208. An act concerning the dedication of public ways, and for other purposes.
- Chapter 209. An act for the payment of the wages and deposits of married women.
- Chapter 211. An act concerning public administrators.
- Chapter 217. An act concerning guardians and treasurers of Indian tribes and others.
- Chapter 217. An act establishing the salary of the first clerk in the office of the secretary of the commonwealth.
- Chapter 218. An act in addition to the several acts concerning the militia.
- Chapter 219. An act to designate the fund for the payment of the salary of the land agent and of appropriations for educational purposes.
- Chapter 221. An act relating to the meetings of the county commissioners in the county of Hampshire.
- Chapter 222. An act to provide for constructing town ways and private ways in certain cases.
- Chapter 223. An act relating to the duties of school committees and the distribution of the income of the school fund.
- Chapter 224. An act concerning security for costs in proceedings in the supreme court of probate.
- Chapter 227. An act concerning the inspection of lime.
- Chapter 228. An act to establish the salaries of the watchman and assistant watchmen of the state house.
- Chapter 241. An act for the correction of the state map.
- Chapter 242. An act concerning the sale of trust estates.
- Chapter 243. An act to regulate the pilotage in Nantucket.
- Chapter 244. An act concerning hawkers and pedlars.
- Chapter 249. An act concerning the appointment of guardians of spendthrifts.

- Chapter 251. An act relating to railroad corporations.
- Chapter 256. An act to establish the salary of the register of probate for the county of Barnstable.
- Chapter 260. An act establishing the salaries of the justices of the court of common pleas.
- Chapter 264. An act establishing the salaries of the district attorneys of the middle and western districts of this commonwealth.
- Chapter 266. An act concerning warrants in cases of bastardy.
- Chapter 268. An act to establish the salary of the register of probate for the county of Suffolk.
- Chapter 271. An act relating to railroads.

### One Thousand Eight Hundred and Forty-seven.

- Chapter 13. An act to define the time of night time in criminal prosecutions.
- Chapter 14. An act concerning the sale of potatoes in this commonwealth.
- Chapter 32. An act requiring banks and savings institutions, under settlement, to make annual reports.
- Chapter 37. An act authorizing the supreme judicial court to restrain the abuses of corporate power by cities and towns.
- Chapter 51. An act to regulate the keeping of gun-cotton and other like substances.
- Chapter 59. An act relating to the salaries of the watchmen of the state prison.
- Chapter 61. An act to establish the salary of the clerk in the office of the adjutant and quartermaster general of the commonwealth.
- Chapter 69. An act relating to agricultural societies.
- Chapter 83. An act to suppress injurious publications.
- Chapter 98. An act concerning the powers of constables.
- Chapter 102. An act concerning the common lands in the island of Nantucket.
- Chapter 104. An act concerning wilful disturbance of religious worship.
- Chapter 107. An act relating to recording officers of joint stock companies, and to the transfer of shares therein.
- Chapter 153. An act relating to interest on certain judgments.
- Chapter 160. An act in addition to "an act to provide for the government and management of houses of correction, in certain cases."
- Chapter 165. An act to establish the state reform school.
- Chapter 166. An act concerning the powers of cities and towns.
- Chapter 170. An act concerning partitions of real estate.
- Chapter 181. An act relating to railroad land damages.
- Chapter 183. An act relating to the abstracts of school returns and the duties of school committees.
- Chapter 195. An act concerning mortgages held by the commonwealth.
- Chapter 199. An act relating to returns of county commissioners and other officers.
- Chapter 209. An act establishing the salary of the first clerk in the office of the treasurer and receiver general of the commonwealth.
- Chapter 224. An act to prevent obstructions in the streets of cities, and to regulate hackney coaches and other vehicles.
- Chapter 226. An act concerning taxes on the real estate of deceased persons.
- Chapter 228. An act to establish the salaries of certain registers of probate.
- Chapter 237. An act establishing the salary of the messenger to the governor and council.
- Chapter 242. An act concerning weights, measures, and balances.
- Chapter 246. An act providing for the inspection of hay.
- Chapter 254. An act relating to repairs of highways.
- Chapter 256. An act relating to the employment of convicts.
- Chapter 259. An act in addition to an act relating to proceedings of county commissioners.
- Chapter 262. An act concerning the powers of cities.
- Chapter 263. An act relating to public charities.
- Chapter 267. An act relating to leasehold estates.
- Chapter 274. An act to secure the payment of fees into the treasury of the commonwealth in certain cases.
- Chapter 279. An act in addition to "an act to regulate pilotage."
- Chapter 280. An act concerning the trustees of methodist episcopal churches.
- Chapter 282. An act in addition to an act requiring returns from registers of deeds.
- Chapter 77. Resolve relating to the furnishing of camp equipage to the field officers of the militia.
- Chapter 83. Resolves for the promulgation of the general laws and resolves.

### One Thousand Eight Hundred and Forty-eight.

- Chapter 4. An act concerning the registry of deeds in the town of Monterey.
- Chapter 9. An act to increase the number of the justices of the supreme judicial court.
- Chapter 10. An act in addition to "an act to establish teachers' institutes."
- Chapter 16. An act to establish an additional district for the administration of criminal law.
- Chapter 29. An act to provide for the instruction of prisoners in jails and houses of correction.
- Chapter 35. An act regulating the election of electors of president and vice-president of the United States.
- Chapter 82. An act in addition to "an act relating to discharged convicts."
- Chapter 98. An act relating to town and private ways.
- Chapter 121. An act relating to annual meetings of banks.
- Chapter 123. An act relating to fees of witnesses in certain cases.
- Chapter 140. An act in relation to the plans and profiles of railroads.
- Chapter 142. An act concerning forcible entry and detainer.

- Chapter 144. An act relating to the recording of executions.  
 Chapter 152. An act concerning the planting of oysters.  
 Chapter 164. An act relating to taxation in parishes.  
 Chapter 166. An act further to regulate the sale of real estate for non-payment of taxes.  
 Chapter 178. An act in addition to an act relating to abstracts of school returns, and the duties of school committees.  
 Chapter 192. An act relating to town and county roads.  
 Chapter 198. An act concerning the continuance of civil actions before justices of the peace.  
 Chapter 214. An act for the better establishment of the police court of the city of New Bedford.  
 Chapter 234. An act relating to probate courts in the county of Essex.  
 Chapter 236. An act concerning remedies for the collection of taxes.  
 Chapter 236. An act authorizing the supreme judicial court to adjourn the same in certain cases.  
 Chapter 237. An act to authorize towns to take land for school-houses.  
 Chapter 240. An act imposing a penalty on town or city officers for neglect of certain duties.  
 Chapter 247. An act concerning indigent children.  
 Chapter 251. An act limiting the liabilities of banks that have surrendered their charters.  
 Chapter 252. An act relating to actions against assignees of insolvent estates.  
 Chapter 254. An act concerning the writ of *habeas corpus*.  
 Chapter 256. An act changing the place for holding certain terms of probate courts in the county of Worcester.  
 Chapter 260. An act to establish a police court in the town of Lawrence.  
 Chapter 267. An act in relation to costs in cases of bankruptcy and insolvency.  
 Chapter 270. An act to regulate intelligence offices.  
 Chapter 271. An act concerning the fees of jurors in certain cases.  
 Chapter 272. An act in relation to town pounds.  
 Chapter 274. An act relating to district school-houses.  
 Chapter 276. An act in addition to an act to provide for the government and management of houses of correction in certain cases.  
 Chapter 277. An act authorizing the appointment of an additional master in chancery in the county of Essex.  
 Chapter 278. An act concerning the erection of balustrades upon buildings in cities.  
 Chapter 279. An act to authorize adjacent towns to unite for school purposes.  
 Chapter 289. An act for the appointment of an assistant clerk of the courts in the county of Middlesex.  
 Chapter 291. An act relating to the erection and location of almshouses and houses of correction.  
 Chapter 299. An act in addition to an act for the more equal assessment of taxes.  
 Chapter 301. An act granting aid to county associations of teachers and others.  
 Chapter 304. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.  
 Chapter 306. An act concerning the state reform school.  
 Chapter 308. An act relating to ballast in the city of Boston.  
 Chapter 309. An act to authorize the granting of administration upon the estates of persons deceased intestate in certain cases.  
 Chapter 310. An act in relation to the payment of annuities.  
 Chapter 313. An act concerning alien passengers.  
 Chapter 316. An act for the more effectual suppression of common gaming houses.  
 Chapter 317. An act authorizing sheriffs and their deputies to administer oaths in certain cases.  
 Chapter 318. An act in addition to "an act for the better establishment of the police court of the city of New Bedford."  
 Chapter 320. An act for the removal of insane persons confined in jail for debt.  
 Chapter 324. An act in relation to prisoners.  
 Chapter 327. An act relating to railroad plans and profiles.  
 Chapter 331. An act concerning the compensation of the justices and clerk of the police court in Lowell.  
 Chapter 332. An act in addition to "an act concerning weights, measures, and balances."

### One Thousand Eight Hundred and Forty-nine.

- Chapter 5. An act to restrain printing or circulating shop bills of the similitude of bank bills.  
 Chapter 9. An act establishing the salaries of the justices of the court of common pleas.  
 Chapter 24. An act to protect sidewalks in towns.  
 Chapter 29. An act for the protection of pigeon beds.  
 Chapter 30. An act establishing an annual term of the court of probate at Pawtucket, in the county of Bristol.  
 Chapter 31. An act concerning appeals to the municipal court in the county of Suffolk.  
 Chapter 32. An act concerning stockholders in banks.  
 Chapter 39. An act establishing additional terms of the court of common pleas in the county of Essex.  
 Chapter 47. An act respecting sales by executors and administrators.  
 Chapter 48. An act to regulate the weight of clam bait.  
 Chapter 49. An act to prevent prize fighting.  
 Chapter 53. An act to alter the times of holding certain terms of the court of common pleas for the county of Hampden.  
 Chapter 56. An act to establish the office of auditor of accounts.  
 Chapter 59. An act to prevent disturbances of schools and public meetings.  
 Chapter 62. An act relating to teachers' institutes.  
 Chapter 66. An act concerning the distribution, custody, and preservation of school returns, and other documents relating to schools.  
 Chapter 66. An act in relation to paupers.  
 Chapter 68. An act concerning insane persons charged with criminal offences.

- Chapter 74. An act in addition to an act concerning jails and houses of correction.
- Chapter 81. An act relating to school libraries and school apparatus.
- Chapter 86. An act to establish a police court in the town of Lynn.
- Chapter 87. An act concerning intestate estates.
- Chapter 98. An act concerning electric telegraph companies and electric telegraphing.
- Chapter 98. An act concerning the rights of mill owners.
- Chapter 110. An act in addition to "an act for the more equal assessment of taxes."
- Chapter 117. An act to amend "an act relating to the duties of school committees, and the distribution of the income of the school fund."
- Chapter 128. An act in further addition to "an act providing for the appointment of public administrators."
- Chapter 124. An act in relation to interest on judgments.
- Chapter 181. An act relating to railroad plans and profiles.
- Chapter 182. An act to extend the jurisdiction of police courts in certain cases.
- Chapter 187. An act extending the jurisdiction of justices of the peace in Suffolk county.
- Chapter 188. An act concerning the tax on sales by auction.
- Chapter 141. An act to allow women divorced from the bonds of matrimony to resume their maiden names.
- Chapter 142. An act to increase the salary of the district-attorney of the western district.
- Chapter 146. An act in relation to the concealment of wills, or testamentary papers, of deceased persons.
- Chapter 148. An act relating to discharged convicts.
- Chapter 149. An act concerning the taxation of income.
- Chapter 151. An act relating to the settlement of certain pauper accounts.
- Chapter 158. An act concerning railroad corporations.
- Chapter 155. An act relating to the state library.
- Chapter 158. An act for the better preservation of useful birds.
- Chapter 159. An act authorizing railroad corporations to alter the direction of highways.
- Chapter 161. An act concerning railroads.
- Chapter 172. An act concerning accidents upon railroads.
- Chapter 178. An act to abolish corporal punishment in the state prison.
- Chapter 186. An act to establish the office of attorney-general.
- Chapter 191. An act to amend an act relating to railroad corporations.
- Chapter 200. An act in relation to the laying out of highways and other ways.
- Chapter 202. An act relating to the registration of births, marriages, and deaths.
- Chapter 206. An act concerning powers of attorney authorizing the conveyance of real estate.
- Chapter 206. An act in relation to school districts.
- Chapter 207. An act relative to state lunatic paupers.
- Chapter 208. An act in relation to the pay of witnesses summoned by the general court.
- Chapter 209. An act concerning school registers.
- Chapter 210. An act in addition to an act to establish the city of Worcester.
- Chapter 211. An act in relation to public health.
- Chapter 215. An act in relation to the office of the secretary of the board of education.
- Chapter 216. An act relating to agents and factors.
- Chapter 218. An act concerning the militia.
- Chapter 220. An act concerning the employment of children in manufacturing establishments.
- Chapter 222. An act in relation to railroad crossings.
- Chapter 281. An act concerning public amusements.

### One Thousand Eight Hundred and Fifty.

- Chapter 5. An act concerning damages for defects in highways and other ways.
- Chapter 6, § 2. Section two only of an act for the protection of the fisheries in the vicinity of Nantucket.
- Chapter 21. An act in relation to mortgages.
- Chapter 27. An act concerning bonds to dissolve attachments.
- Chapter 31. An act to amend "an act regulating the compensation of sheriffs."
- Chapter 34. An act in addition to the several acts in relation to the competency of witnesses in certain cases.
- Chapter 37. An act in addition to the acts relating to the state prison and the government and discipline thereof.
- Chapter 41. An act in addition to "an act concerning the distribution, custody, and preservation, of school returns and other documents and papers relating to schools."
- Chapter 44. An act to provide further penalties for wilfully and maliciously obstructing the passing of carriages upon roads.
- Chapter 45. An act in addition to an act concerning the sale of the real estate of minors.
- Chapter 49. An act concerning the duties of the attorney-general.
- Chapter 48. An act concerning savings banks when summoned as trustees.
- Chapter 57. An act to extend the power of collectors of taxes.
- Chapter 68. An act concerning the fees of grand jurors.
- Chapter 88. An act in addition to "an act relating to the state library."
- Chapter 88. An act concerning the board of education.
- Chapter 90. An act to prevent persons from using fraudulent marks and stamps.
- Chapter 91. An act relating to limited partnerships.
- Chapter 97. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.
- Chapter 98. An act concerning the redemption of real estate sold for taxes.
- Chapter 100. An act relating to divorce.



- Chapter 106. An act relating to alien passengers.  
 Chapter 107. An act concerning costs in criminal prosecutions.  
 Chapter 108. An act in addition to an act in relation to the public health.  
 Chapter 111. An act in relation to dower in testate estates.  
 Chapter 112. An act additional to an act to establish the state reform school.  
 Chapter 114. An act to protect ice intended for merchandise.  
 Chapter 115. An act in relation to the qualification of school teachers.  
 Chapter 121. An act relating to banns of marriage.  
 Chapter 181. An act relating to the branding of foreign pickled fish.  
 Chapter 183. An act in addition to an act concerning coroners' inquests.  
 Chapter 141. An act concerning accounts of the guardians of Indians in this commonwealth.  
 Chapter 148. An act in relation to the compensation of committees and commissioners.  
 Chapter 164. An act in addition to acts for regulating the pilotage of vessels through the Vineyard Sound to Nantucket.  
 Chapter 166. An act to regulate the storage and sale of camphene and other like fluids.  
 Chapter 177. An act concerning the inspection of sole leather.  
 Chapter 179. An act concerning the duties and powers of school committees.  
 Chapter 182. An act in relation to the state library.  
 Chapter 186. An act concerning persons under guardianship imprisoned for non-payment of fines.  
 Chapter 188. An act relating to the powers and duties of the watch in the cities and towns of this commonwealth.  
 Chapter 194. An act in relation to the carrying of slung shot.  
 Chapter 196. An act in relation to bonds to be given to judges of probate.  
 Chapter 199. An act concerning bail in civil actions.  
 Chapter 200. An act in addition to an act concerning devises and wills by married women.  
 Chapter 204. An act relating to probate courts in the county of Plymouth.  
 Chapter 207. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.  
 Chapter 209. An act concerning the return of executions issuing from the supreme judicial court and court of common pleas.  
 Chapter 213. An act prescribing the mode of calling and warning school district meetings.  
 Chapter 230. An act to establish the compensation of the messengers, doorkeepers, and pages.  
 Chapter 232. An act for regulating the sale of intoxicating drinks.  
 Chapter 235. An act allowing fees to judges of probate.  
 Chapter 236. An act to establish the office of assistant-clerk in the courts in the county of Worcester.  
 Chapter 239. An act concerning the partition of lands owned by several persons.  
 Chapter 241. An act to facilitate the settlement of trust estates.  
 Chapter 244. An act concerning the probate court in the county of Franklin.  
 Chapter 249. An act concerning partition of real estate.  
 Chapter 258. An act to establish additional terms of the court of common pleas for the county of Berkshire.  
 Chapter 261. An act regulating the measurement of cranberries and other berries.  
 Chapter 263. An act in addition to the acts for the punishment of drunkards.  
 Chapter 276. An act in addition to an act to prevent obstructions in the streets of cities, and to regulate hackney-coaches and other vehicles.  
 Chapter 276. An act concerning the assessment of taxes.  
 Chapter 277. An act to prevent the explosion of steam-bollers.  
 Chapter 278. An act concerning proceedings for partition of real estate.  
 Chapter 284. An act concerning sales of personal property under mortgage.  
 Chapter 286. An act concerning district school-houses.  
 Chapter 287. An act establishing the times and places for holding the probate court in the county of Hampden.  
 Chapter 288. An act concerning the inspection of beef and pork.  
 Chapter 289. An act in addition to the several acts relating to the state prison.  
 Chapter 291. An act for the better preservation of order at muster-fields, and other places of public gathering.  
 Chapter 292. An act requiring returns from superintendents of alien passengers.  
 Chapter 294. An act concerning truant children and absentees from school.  
 Chapter 295. An act in addition to "an act concerning weights, measures, and balances."  
 Chapter 299. An act providing commissioners for the towns of Chelsea and North Chelsea.  
 Chapter 301. An act relative to school districts.  
 Chapter 303. An act to extend and punish the crime of larceny in certain cases.  
 Chapter 306. An act in addition to an act to establish a police court in the city of Worcester.  
 Chapter 307. An act in relation to commissioners of the public lands.  
 Chapter 308. An act to require certain corporations to make returns to assessors.  
 Chapter 310. An act to establish a police court in the town of Pittsfield.  
 Chapter 315. An act in addition to "an act in relation to the state library."  
 Chapter 319. An act concerning notifications of creditors of insolvent estates.  
 Chapter 66. Resolve concerning teachers' institutes.  
 Chapter 89. Resolve for the promulgation of the general laws and resolves.

### One Thousand Eight Hundred and Fifty-one.

- Chapter 14. An act to enable the owner of equitable estates tail to convey the same in fee simple and unite the legal estate therewith.  
 Chapter 16. An act relating to returns of votes for county commissioners.

- Chapter 24. An act relating to the election of registers of deeds and county treasurers.
- Chapter 29. An act authorizing notaries public to administer oaths.
- Chapter 31. An act concerning probate bonds.
- Chapter 38. An act for the appointment of an assistant-clerk of the courts for the county of Middlesex.
- Chapter 40. An act concerning the election of representatives in congress and electors of president and vice-president of the United States.
- Chapter 42. An act relating to accounts for the support of state paupers.
- Chapter 57. An act concerning mortgages of ships or vessels.
- Chapter 58. An act to authorize sheriffs and their deputies to administer oaths to appraisers.
- Chapter 68. An act in further addition to an act concerning weights, measures, and balances.
- Chapter 70. An act to authorize members of city councils to hold other offices.
- Chapter 71. An act to provide for the taking of depositions in criminal cases.
- Chapter 82. An act relating to libels for divorce.
- Chapter 87. An act relating to writs of error in criminal cases.
- Chapter 88. An act to protect towns from injury by the neglect of railroad corporations.
- Chapter 91. An act in addition to an act for the better preservation of order at muster-fields and other places of public gathering.
- Chapter 92. An act concerning bail in criminal cases.
- Chapter 98. An act relating to jail breach.
- Chapter 94. An act concerning constables.
- Chapter 96. An act concerning prosecutions for the maintenance of bastard children.
- Chapter 100. An act to regulate the measurement of marble.
- Chapter 102. An act relating to the annual reports from railroad corporations.
- Chapter 112. An act to increase the Massachusetts school fund.
- Chapter 127. An act to establish a board of bank commissioners.
- Chapter 129. An act concerning malicious mischief.
- Chapter 133. An act relating to joint stock companies.
- Chapter 133. An act to facilitate the settlement of estates of deceased persons.
- Chapter 138. An act regulating the publication of advertisements issued under the authority of probate judges and commissioners of insolvency.
- Chapter 147. An act concerning effects of passengers transported by railroad corporations and other common carriers.
- Chapter 151. An act concerning larceny of real property.
- Chapter 156. An act relating to shop breaking and aggravated larceny.
- Chapter 158. An act in relation to the clerks of courts.
- Chapter 161. An act for the better preservation of municipal and other records.
- Chapter 162. An act providing for the appointment of police officers.
- Chapter 167. An act concerning vacancies in ward officers.
- Chapter 186. An act in addition to "an act to authorize towns to take land for school-houses."
- Chapter 189. An act in further addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.
- Chapter 190. An act for the appointment of land agent.
- Chapter 198. An act to prevent disturbances at funerals.
- Chapter 204. An act exempting the members of the ancient and honorable artillery company from jury duty.
- Chapter 206. An act to provide further remedy for creditors.
- Chapter 208. An act to authorize judges of probate to take the proof of the execution of deeds in certain cases.
- Chapter 211. An act concerning illegitimate children.
- Chapter 213. An act concerning the levy of executions.
- Chapter 214. An act concerning the location of highways.
- Chapter 215. An act to exempt agricultural societies from taxation.
- Chapter 216. An act providing for returns of moneys received by public officers.
- Chapter 217. An act to provide for the inspection of belt leather.
- Chapter 218. An act in relation to easements.
- Chapter 227. An act to provide for an additional term of the county commissioners for the county of Essex.
- Chapter 238. An act regulating the measurement of chestnuts and walnuts.
- Chapter 246. An act concerning arrests for offences committed on the Lord's day.
- Chapter 247. An act in addition to the "act concerning electric telegraph companies and electric telegraphing."
- Chapter 252. An act relating to stockholders in corporations.
- Chapter 253. An act concerning judges of probate.
- Chapter 255. An act concerning defendants in actions on joint contracts.
- Chapter 256. An act to provide for change of the names of persons.
- Chapter 258. An act requiring returns from treasurers of institutions for savings.
- Chapter 261. An act in addition to "an act concerning the supreme judicial court and the court of common pleas."
- Chapter 267. An act to authorize the business of banking.
- Chapter 268. An act concerning the police court of the city of Worcester.
- Chapter 273. An act concerning the powers and duties of justices of the peace.
- Chapter 287. An act concerning the powers of the police court of the city of Worcester.
- Chapter 289. An act concerning the recovery of damages against aqueduct corporations.
- Chapter 290. An act in relation to damages sustained by the laying out of highways.
- Chapter 296. An act concerning intercourse with convicts in the state prison.
- Chapter 298. An act in addition to an act concerning hawkers and pedlars.

- Chapter 302. An act to amend an act concerning the militia.
- Chapter 303. An act in addition to an act in relation to school districts.
- Chapter 305. An act to authorize cities and towns to establish and maintain public libraries.
- Chapter 315. An act concerning stockholders in manufacturing corporations.
- Chapter 317. An act relating to railroad crossings.
- Chapter 319. An act relating to the erection and use of buildings for stables and bowling alleys.
- Chapter 322. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.
- Chapter 324. An act to provide for the adoption of children.
- Chapter 325. An act concerning proceedings and practice in civil actions before justices' courts, police courts, justices of the peace, and trial justices.
- Chapter 327. An act to secure the equal distribution of the property of insolvent corporations amongst their creditors.
- Chapter 330. An act to increase the number of justices of the court of common pleas.
- Chapter 336. An act to authorize the county commissioners of Middlesex county to exercise certain powers in Chelsea and North Chelsea, in Suffolk county.
- Chapter 339. An act in addition to an act concerning banks and banking.
- Chapter 342. An act to appoint a board of commissioners in relation to alien passengers and state paupers.
- Chapter 343. An act to secure to mechanics and laborers their payment for labor by a lien on real estate.
- Chapter 346. An act relating to the punishment of offences mentioned in the one hundred and forty-third chapter of the Revised Statutes.
- Chapter 348. An act concerning the indictment of corporations.
- Chapter 349. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.

### One Thousand Eight Hundred and Fifty-two.

- Chapter 1. An act concerning the appointment of appraisers in civil process.
- Chapter 4. An act relating to shop breaking and aggravated larceny.
- Chapter 9. An act in addition to an act relating to joint stock companies.
- Chapter 10. An act concerning the custody of records.
- Chapter 14. An act to amend the ninth and fourteenth sections of the one hundred and thirty-fourth chapter of the Revised Statutes.
- Chapter 29. An act to remove all disability to take and hold real estate by reason of alienage.
- Chapter 33. An act concerning bills of expenses against the commonwealth.
- Chapter 37. An act to define felony.
- Chapter 41. An act in addition to an act to facilitate the settlement of estates of persons deceased.
- Chapter 44. An act relating to the state lunatic hospitals.
- Chapter 46. An act concerning police courts.
- Chapter 51. An act giving concurrent jurisdiction to the supreme judicial court and court of common pleas, in certain cases.
- Chapter 54. An act authorizing arbitrators, referees, and auditors to administer oaths.
- Chapter 55. An act for the voluntary closing of corporations.
- Chapter 56. An act in addition to an act concerning cemeteries.
- Chapter 64. An act to prevent the wilful injury of bank bills.
- Chapter 75. An act concerning judicial proceedings in the county of Dukes County.
- Chapter 76. An act relating to bonds.
- Chapter 86. An act to protect titles to real estate derived from aliens.
- Chapter 104. An act concerning the militia.
- Chapter 112. An act for the appointment of one additional commissioner of insolvency for the county of Worcester.
- Chapter 113. An act in relation to the house of correction in the county of Suffolk.
- Chapter 114. An act to establish additional terms of the court of common pleas for the county of Hampshire.
- Chapter 115. An act concerning auctioneers.
- Chapter 119. An act concerning the powers of school districts.
- Chapter 123. An act concerning the public schools.
- Chapter 126. An act to authorize reviews of judgments upon recognizances to the commonwealth.
- Chapter 127. An act to increase the number of justices of the supreme judicial court.
- Chapter 129. An act in addition to an act relating to the erection and use of buildings for stables and bowling alleys.
- Chapter 132. An act concerning savings banks and institutions for savings.
- Chapter 137. An act in addition to an act concerning mutual marine insurance companies.
- Chapter 140. An act concerning tender in actions at law and suits in equity.
- Chapter 142. An act to establish a state board of agriculture.
- Chapter 143. An act to divide the commonwealth into districts for the choice of representatives in the congress of the United States.
- Chapter 144. An act in relation to easements of light and air.
- Chapter 154. An act concerning the admission of aliens as attorneys at law.
- Chapter 159. An act concerning police justices.
- Chapter 163. An act in regard to the county commissioners for Chelsea, North Chelsea, and Wintthrop.
- Chapter 169. An act concerning the duties of assessors.
- Chapter 175. An act concerning parishes and religious societies.

- Chapter 181. An act for the better establishment of the police court of the city of Newburyport.
- Chapter 186. An act in regard to obstructing engines or carriages on railroads.
- Chapter 187. An act concerning the support of defendants committed to prison under the provisions of the forty-sixth chapter of the Revised Statutes.
- Chapter 189. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.
- Chapter 191. An act to regulate the use of steam engines.
- Chapter 196. An act to authorize the manufacture of silk and other goods.
- Chapter 198. An act to establish an additional district for the administration of the criminal law.
- Chapter 199. An act in relation to district school-houses.
- Chapter 200. An act in addition to an act to establish the office of assistant clerk of the courts in the county of Worcester.
- Chapter 209. An act concerning returns of elections.
- Chapter 211. An act respecting bail bonds in civil actions.
- Chapter 212. An act concerning trustees.
- Chapter 213. An act relating to discharged convicts.
- Chapter 216. An act concerning teachers' institutes.
- Chapter 222. An act concerning disturbances of schools and public meetings.
- Chapter 224. An act to prevent and punish fraudulent arrests.
- Chapter 234. An act concerning the assessment of taxes.
- Chapter 236. An act in addition to an act entitled an act to authorize the business of banking.
- Chapter 238. An act concerning the powers of county commissioners.
- Chapter 240. An act concerning the attendance of children at school.
- Chapter 241. An act concerning inventories in the courts of probate.
- Chapter 242. An act concerning the state prison at Charlestown.
- Chapter 245. An act in addition to an act concerning arrests for offences committed on the Lord's day.
- Chapter 246. An act concerning agricultural societies.
- Chapter 247. An act further to guard against the explosion of steam boilers.
- Chapter 248. An act concerning the powers of guardians.
- Chapter 249. An act to establish an additional term of the probate court in the county of Plymouth.
- Chapter 254. An act in addition to the act to punish abduction.
- Chapter 256. An act in regard to appraisers of real estate taken on execution.
- Chapter 259. An act to punish the crimes of treason, rape, and arson.
- Chapter 262. An act in addition to an act to provide for the adoption of children.
- Chapter 267. An act in addition to an act to establish the office of assistant clerk of the courts in the county of Middlesex.
- Chapter 269. An act relating to the treasurer of the state lunatic hospital.
- Chapter 275. An act in relation to paupers having no settlement in this commonwealth.
- Chapter 279. An act concerning alien passengers.
- Chapter 282. An act concerning certificates of elections.
- Chapter 283. An act in addition to an act concerning truant children and absentees from school.
- Chapter 287. An act concerning the counties in which actions may be brought.
- Chapter 288. An act relating to the court of common pleas in the county of Essex.
- Chapter 289. An act relating to returns by justices of the peace and other officers.
- Chapter 291. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.
- Chapter 292. An act relating to trust estates.
- Chapter 293. An act in addition to the several acts for the relief of insolvent debtors.
- Chapter 294. An act to facilitate the settlement of the estates of deceased persons.
- Chapter 296. An act in addition to an act in relation to the carrying of slung shot.
- Chapter 298. An act relating to the police court of Worcester.
- Chapter 299. An act in relation to the jurisdiction of justices of the peace and police courts in regard to offences against property in cemeteries.
- Chapter 302. An act to regulate the measurement of charcoal.
- Chapter 303. An act concerning railroad corporations.
- Chapter 304. An act to establish a police court in the town of Fall River.
- Chapter 307. An act in addition to an act to secure to mechanics and laborers their payment for labor by a lien on real estate.
- Chapter 312. An act relating to the proceedings, practice, and rules of evidence in actions at law.
- Chapter 314. An act to extend the jurisdiction of justices of the peace in civil actions.
- Chapter 318. An act to allow the auditor a further sum for clerk hire.
- Chapter 319. An act relating to parishes and religious societies.
- Chapter 321. An act to protect the right of suffrage.
- Chapter 17. Resolve for the compilation of a manual for arms with percussion locks.
- Chapter 27. Resolve concerning Scott's System of Infantry Tactics.

### One Thousand Eight Hundred and Fifty-three.

- Chapter 5. An act relating to railroad and highway damages in certain cases.
- Chapter 23. An act concerning decrees of alimony.
- Chapter 27. An act to prevent gambling in and about muster fields and places of public gathering.
- Chapter 31. An act concerning the adoption of children.

- Chapter 83. An act to secure more equal taxation.
- Chapter 84. An act in relation to the powers and duties of jailers and masters of houses of correction.
- Chapter 88. An act concerning the manner of voting at certain elections.
- Chapter 49. An act in addition to an act in relation to the office of secretary of the board of education.
- Chapter 57. An act for the better establishment of the police court of Salem.
- Chapter 69. An act in relation to sheriffs' bonds.
- Chapter 74. An act altering the times and places of holding certain probate courts in the county of Barnstable.
- Chapter 78. An act in addition to an act for the more equal assessment of taxes.
- Chapter 90. An act for the more speedy trial of actions by law.
- Chapter 98. An act concerning lunatics furiously mad.
- Chapter 116. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.
- Chapter 119. An act to establish the pay of watchmen of the state house.
- Chapter 122. An act to provide for the taxation of certain real estate belonging to the commonwealth.
- Chapter 127. An act in relation to agricultural societies.
- Chapter 149. An act in addition to an act to authorize towns to take lands for school-houses.
- Chapter 156. An act to prevent the transaction of business under unauthorized names.
- Chapter 180. An act to amend the laws for the regulation of the inspection of pickled fish.
- Chapter 174. An act concerning the militia.
- Chapter 179. An act concerning the police court of the city of Boston, and the justices' court for the county of Suffolk.
- Chapter 184. An act relating to receivers and concealers of stolen and embezzled property.
- Chapter 188. An act concerning armories for the use of the volunteer militia.
- Chapter 193. An act establishing state scholarships.
- Chapter 194. An act concerning implements of burglary.
- Chapter 198. An act to extend the jurisdiction of police courts in cases of assault and battery.
- Chapter 258. An act concerning illegitimate children whose parents intermarry.
- Chapter 256. An act concerning the rights of pew owners.
- Chapter 257. An act concerning partition of real estate.
- Chapter 259. An act concerning insane persons confined in houses of correction.
- Chapter 269. An act relating to the levy of justices' executions.
- Chapter 276. An act establishing the salaries of the first and second clerks in the office of the secretary of the commonwealth.
- Chapter 281. An act relating to returns of justices of the peace and other officers.
- Chapter 284. An act relating to the salaries of certain officers of the state prison.
- Chapter 296. An act concerning the powers of commissioners of Middlesex county in the towns of Chelsea, North Chelsea, and Winthrop.
- Chapter 305. An act to regulate the measurement of charcoal.
- Chapter 310. An act concerning county debts.
- Chapter 312. An act to regulate agricultural, horticultural, and ornamental tree associations.
- Chapter 315. An act in relation to the grades of certain streets and ways.
- Chapter 316. An act to define the commencement of suits in equity in certain cases.
- Chapter 318. An act concerning the state lunatic hospital at Taunton.
- Chapter 319. An act for the equalization of taxes.
- Chapter 325. An act for the correction of the county maps.
- Chapter 336. An act in addition to an act relating to banns of marriage.
- Chapter 337. An act relating to artillery companies.
- Chapter 347. An act in addition to an act entitled an act to authorize towns to take lands for school-houses.
- Chapter 351. An act in addition to the several acts relating to county commissioners, and also in relation to railroads.
- Chapter 352. An act concerning the state pauper establishments within this commonwealth.
- Chapter 380. An act concerning the transit of alien passengers.
- Chapter 366. An act relating to the commutation of bonds taken by superintendents of alien passengers.
- Chapter 339. An act relating to costs in civil actions.
- Chapter 371. An act giving equitable remedies in suits at law.
- Chapter 378. An act to facilitate the detection and to prevent the circulation of counterfeit bank bills.
- Chapter 380. An act establishing the salaries of the judges of probate for the counties of Worcester, Essex, Norfolk, and Plymouth.
- Chapter 388. An act in relation to pauper convicts.
- Chapter 389. An act relative to trust funds of parishes and religious societies.
- Chapter 392. An act to restrain the issue or circulation of bank bills for any fractional part of a dollar.
- Chapter 393. An act relating to the filing of affidavits of notice of sale of real estate.
- Chapter 394. An act to prevent the adulteration of drugs and medicines.
- Chapter 401. An act concerning bank directors.
- Chapter 402. An act concerning the adoption of children.
- Chapter 406. An act defining the liability of innkeepers for losses of their guests.
- Chapter 407. An act concerning probate courts in the county of Essex.
- Chapter 409. An act for the sale of the public lands in Maine.
- Chapter 410. An act concerning the partition of real estate.
- Chapter 412. An act to punish the offence of obtaining money by threats.
- Chapter 413. An act to change the jurisdiction of cases within the county of Suffolk, under the acts for the relief of poor debtors and for the approval of bail.

- Chapter 414. An act concerning the liability of railroad corporations for loss of life in certain cases.  
 Chapter 418. An act to prevent carelessness and neglect of common carriers of persons.  
 Chapter 419. An act in further addition to an act providing for the appointment of public administrators.

### One Thousand Eight Hundred and Fifty-four.

- Chapter 2. An act authorizing the supreme judicial court to restrain railroad corporations by injunction from entering upon and using land in certain cases.  
 Chapter 7. An act concerning loans by banks to the commonwealth.  
 Chapter 11. An act concerning the militia.  
 Chapter 12. An act relating to the obtaining of property by false pretences.  
 Chapter 17. An act relating to commissioners to take depositions and acknowledgments in other states.  
 Chapter 23. An act relating to the transportation of baggage on railroads.  
 Chapter 24. An act concerning the adoption of children, and the change of name of persons.  
 Chapter 34. An act to establish a police court in the town of Haverhill.  
 Chapter 39. An act concerning the election of city, town, and county officers.  
 Chapter 45. An act relating to the state reform school and the state board of agriculture.  
 Chapter 53. An act in addition to an act concerning the manner of voting at certain elections.  
 Chapter 60. An act to establish a police court in the town of Milford.  
 Chapter 70. An act relating to the election of representatives in the congress of the United States.  
 Chapter 74. An act in relation to the division of water-rights.  
 Chapter 77. An act concerning county commissioners.  
 Chapter 81. An act to establish the salary of the clerk in the office of the adjutant and quartermaster-general of the commonwealth.  
 Chapter 87. An act in addition to an act in relation to public health.  
 Chapter 88. An act concerning truants in the city of Boston.  
 Chapter 92. An act relating to notices of meetings of commissioners upon the insolvent estates of deceased persons.  
 Chapter 93. An act in relation to delivering intoxicating liquors to persons in custody.  
 Chapter 95. An act in addition to an act entitled "an act in addition to an act to provide for the confinement of idiots and insane persons."  
 Chapter 97. An act in addition to "an act relating to the state library."  
 Chapter 129. An act in addition to an act to establish the police court in the town of Milford.  
 Chapter 131. An act establishing the salaries of certain public officers.  
 Chapter 189. An act in addition to an act concerning the state pauper establishments within this commonwealth.  
 Chapter 206. An act relating to contracts for public works.  
 Chapter 215. An act concerning the salary of the assistant-clerk of the courts of the county of Worcester.  
 Chapter 219. An act in addition to an act concerning the transit of alien passengers.  
 Chapter 233. An act in addition to an act concerning county debts.  
 Chapter 253. An act relating to religious societies.  
 Chapter 262. An act in relation to the hospital on Rainsford Island for state paupers.  
 Chapter 270. An act establishing the salaries of the warden, deputy-warden, chaplain, and inspectors of the state prison.  
 Chapter 277. An act to establish a police court in the town of Adams.  
 Chapter 286. An act to authorize railroad companies to issue bonds.  
 Chapter 300. An act providing for the increase of the Massachusetts school fund, and for the disposition of its income.  
 Chapter 302. An act in relation to visiting at the state prison.  
 Chapter 307. An act concerning the publication of the condition of banks.  
 Chapter 308. An act establishing the salary of the governor of the commonwealth.  
 Chapter 309. An act concerning the returns of banks, made on the requisition of the governor.  
 Chapter 314. An act relative to superintendents of schools.  
 Chapter 318. An act changing the place for holding certain terms of the probate court in the county of Worcester.  
 Chapter 322. An act relating to the venue of transitory actions.  
 Chapter 326. An act concerning fees of witnesses in cases of contested elections of members of the house of representatives.  
 Chapter 327. An act relating to mill and reservoir dams.  
 Chapter 328. An act to authorize justices of the peace to impose imprisonment instead of fine in certain cases.  
 Chapter 329. An act in addition to the several acts for the relief of insolvent debtors, and for the more equal distribution of their effects.  
 Chapter 335. An act to establish a police court within the city of Cambridge.  
 Chapter 339. An act for the better security of property in logs, masts, spars, and other timber.  
 Chapter 341. An act to establish the compensation of the messengers and door-keepers of the senate and house of representatives and assistant-messenger to the governor and council.  
 Chapter 346. An act relative to the police court in Worcester.  
 Chapter 354. An act in addition to an act relating to the annual reports of railroad corporations.  
 Chapter 358. An act to protect the property of the Humane Society of Massachusetts.  
 Chapter 361. An act to regulate the inspection and measurement of bark.  
 Chapter 367. An act in relation to the militia.  
 Chapter 372. An act establishing the salaries of judges and registers of probate.  
 Chapter 373. An act concerning the salary of the adjutant-general.  
 Chapter 377. An act relating to sales under powers in mortgage deeds.

- Chapter 378. An act to prevent the obstruction of streets by railroads.  
 Chapter 380. An act to prevent extortion by witnesses.  
 Chapter 389. An act concerning witness fees.  
 Chapter 400. An act in further addition to the act concerning the manufacture and sale of spirituous and intoxicating liquors.  
 Chapter 401. An act in relation to county commissioners.  
 Chapter 406. An act relating to the descent and distribution of the estate of intestates.  
 Chapter 416. An act in relation to female convicts.  
 Chapter 419. An act in relation to prosecutions for fines inuring to the use of cities.  
 Chapter 423. An act in addition to the acts relative to the returns to be made by railroad corporations.  
 Chapter 424. An act to prevent incendiarism.  
 Chapter 428. An act to make further provisions for widows in certain cases.  
 Chapter 429. An act to authorize cities and towns to appropriate money for certain purposes.  
 Chapter 437. An act concerning lunatic state paupers, and admission to the state pauper establishments.  
 Chapter 438. An act in addition to an act relating to joint stock companies.  
 Chapter 439. An act in addition to the acts for the relief of poor debtors.  
 Chapter 440. An act relating to actions at law.  
 Chapter 450. An act concerning the possession and use of billiards, bowls, and other like implements, for other purposes than gaming.  
 Chapter 454. An act to authorize the business of loan and fund associations.  
 Chapter 52. Resolve authorizing the adjutant-general to enlarge the "manual of arms."

### One Thousand Eight Hundred and Fifty-five.

- Chapter 8. An act in addition to an act concerning county commissioners.  
 Chapter 4. An act to amend the two hundred and first section of the twenty-eighth chapter of the Revised Statutes.  
 Chapter 8. An act to amend the fifteenth chapter of the Revised Statutes, as to the election of selectmen.  
 Chapter 9. An act to amend the sixty-first section of the thirty-ninth chapter of the Revised Statutes and providing further remedies for persons whose lands are taken by railroad corporations.  
 Chapter 10. An act in relation to laying out town ways, and land taken for school-houses.  
 Chapter 12. An act to amend the three hundred and twenty-second chapter of the statutes of eighteen hundred and fifty-four, "in relation to transitory actions."  
 Chapter 15. An act relative to the numbering of persons between the ages of five and fifteen years.  
 Chapter 23. An act to amend the second section of the two hundred and twenty-third chapter of the acts of eighteen hundred and forty-six, "concerning the duties of school committees."  
 Chapter 26. An act to establish a police court in the town of Chelsea.  
 Chapter 27. An act relating to the jurisdiction of the supreme judicial court in cases of divorce.  
 Chapter 28. An act restricting the several courts established by the laws of this commonwealth from exercising jurisdiction in cases of naturalization.  
 Chapter 43. An act to authorize cities and towns to establish sidewalks.  
 Chapter 45. An act to aid police officers and watchmen in the discharge of their duties.  
 Chapter 53. An act concerning the punishment of drunkenness.  
 Chapter 56. An act in relation to the trial of libels for divorce.  
 Chapter 64. An act in addition to an act to prevent incendiarism.  
 Chapter 65. An act to amend the first section of the eighty-second chapter of the acts of eighteen hundred and fifty-one respecting libels for divorce.  
 Chapter 66. An act to amend the fifth section of the one hundred and twenty-fourth chapter of the acts of eighteen hundred and forty-one relative to the dissolution of attachments.  
 Chapter 68. An act in addition to an act relating to joint stock companies.  
 Chapter 69. An act to punish and prevent the crime of night-walking.  
 Chapter 79. An act to establish a registry of deeds in the northern district of Middlesex.  
 Chapter 88. An act to establish a police court in the town of Williamstown.  
 Chapter 92. An act concerning the election of county treasurers and registers of deeds.  
 Chapter 98. An act in relation to school reports and returns.  
 Chapter 95. An act to compel the erection of bounds at the termination and angles of roads.  
 Chapter 101. An act to amend an act entitled "an act concerning the publication of the condition of banks."  
 Chapter 104. An act to authorize the making of roads and drains in certain cases.  
 Chapter 111. An act relating to filing executors' bonds.  
 Chapter 116. An act further to prevent and punish fraudulent arrests.  
 Chapter 118. An act respecting watchmen.  
 Chapter 120. An act relating to the fees of jurors and witnesses.  
 Chapter 121. An act to regulate the business of pawn-brokers.  
 Chapter 122. An act to make pews personal property.  
 Chapter 124. An act to establish a board of insurance commissioners.  
 Chapter 126. An act concerning the payment of teachers' wages.  
 Chapter 128. An act to authorize towns to establish fire departments.  
 Chapter 132. An act to perpetuate evidence of the appointment of executors and administrators.  
 Chapter 135. An act to punish certain frauds and cheats.  
 Chapter 137. An act in relation to libels for divorce.  
 Chapter 140. An act relating to the organization of corporations.  
 Chapter 146. An act relating to gas light companies.

- Chapter 151. An act relative to state paupers.
- Chapter 152. An act concerning the duties and rights of jurors.
- Chapter 153. An act to establish a police court in the city of Roxbury.
- Chapter 157. An act relating to the limitation of actions.
- Chapter 161. An act relating to volunteer fire engine companies.
- Chapter 163. An act in furtherance of the discipline of academies.
- Chapter 168. An act for the prevention of counterfeiting.
- Chapter 172. An act in addition to the acts relating to state almshouses and the support of paupers.
- Chapter 177. An act concerning sales of real estate encumbered by mortgage or otherwise.
- Chapter 180. An act to prevent delays and expense in criminal proceedings.
- Chapter 186. An act relative to new trials in the supreme judicial court.
- Chapter 188. An act regulating the sale of anthracite, bituminous or mineral coal.
- Chapter 192. An act relating to the court of common pleas when held in and for the county of Bristol.
- Chapter 194. An act relating to jurisdiction and proceedings in equity.
- Chapter 197. An act for the better preservation of useful birds.
- Chapter 213. An act to prevent the sale or disposition of collateral security.
- Chapter 214. An act relating to the time of holding courts in the county of Worcester.
- Chapter 215. An act concerning the manufacture and sale of spirituous and intoxicating liquors.
- Chapter 222. An act relating to ordinances and by-laws of cities and towns.
- Chapter 228. An act in relation to seals of corporations.
- Chapter 224. An act establishing the pay of assessors and selectmen.
- Chapter 226. An act in relation to proceedings in insolvency.
- Chapter 231. An act concerning liens on ships and vessels.
- Chapter 232. An act to regulate the sale of wheat, corn, and other grain, and meal.
- Chapter 238. An act authorizing the sale of real estate held by married women, who are insane, in certain cases.
- Chapter 236. An act concerning loan fund associations.
- Chapter 239. An act concerning offences against public health.
- Chapter 244. An act concerning the duties of school committees in signing school returns.
- Chapter 245. An act in addition to an act to protect the Indian lands from trespassers and intruders.
- Chapter 247. An act concerning the assessment of damages for mortgaged land taken for railroads.
- Chapter 249. An act concerning arrest in cases of tort.
- Chapter 256. An act in amendment of "an act concerning public schools," passed March twenty-fifth, eighteen hundred and forty-five.
- Chapter 257. An act concerning burials and burying-grounds.
- Chapter 265. An act concerning bail in criminal cases.
- Chapter 270. An act in addition to "an act to establish a police court in the city of Lawrence."
- Chapter 274. An act empowering the inhabitants of villages to establish watch districts within the same.
- Chapter 276. An act to establish an additional district for the administration of the criminal law.
- Chapter 278. An act in relation to persons committed to prison on warrants of distress.
- Chapter 280. An act requiring guardians to render their accounts as provided for in the fifth section of the seventy-ninth chapter of the Revised Statutes, as often as once in three years.
- Chapter 288. An act concerning suits against executors and administrators.
- Chapter 287. An act relating to by-laws of cities and towns.
- Chapter 290. An act concerning manufacturing corporations.
- Chapter 294. An act in relation to savings banks.
- Chapter 302. An act concerning trustees of charitable funds given or bequeathed to cities and towns.
- Chapter 304. An act to protect the property of married women.
- Chapter 307. An act in addition to "an act concerning executors and administrators, guardians and trustees."
- Chapter 309. An act in addition to "an act concerning the attendance of children at school."
- Chapter 311. An act regulating the fees of registers of deeds and other recording officers.
- Chapter 312. An act to establish a police court in the town of Lee.
- Chapter 314. An act in relation to conveyances and devises of estates for religious purposes.
- Chapter 318. An act to amend an act to authorize towns to take land for school-houses.
- Chapter 320. An act to change the place for holding certain probate courts in the county of Plymouth.
- Chapter 321. An act for the better establishment of the police court of Newburyport.
- Chapter 323. An act concerning the study of anatomy.
- Chapter 328. An act to establish the salary of the attorney of the commonwealth for the county of Suffolk.
- Chapter 329. An act in further addition to the several acts concerning husband and wife.
- Chapter 334. An act relating to the salaries of certain officers in the state prison.
- Chapter 340. An act in relation to the accounts of committees of the legislature.
- Chapter 350. An act to prevent obstructions to highways and town ways by railroads.
- Chapter 356. An act to prohibit the use of poisonous substances in the manufacture of spirituous and intoxicating liquors.
- Chapter 361. An act relating to savings banks and institutions for savings.
- Chapter 363. An act in addition to various acts in relation to insolvent debtors, and for the more equal distribution of their effects.
- Chapter 364. An act relating to summoning in defendants in real and mixed actions.
- Chapter 366. An act relating to the registration of births, marriages, and deaths, in the state almshouse.
- Chapter 369. An act in addition to an act in relation to public health.
- Chapter 374. An act relative to the specific performance of written contracts.
- Chapter 379. An act in addition to an act concerning the employment of children in manufacturing establishments.



- Chapter 391. An act in relation to offensive trades.
- Chapter 396. An act in relation to trials for libels.
- Chapter 397. An act to authorise certain forms under "an act concerning the manufacture and sale of spirituous and intoxicating liquors."
- Chapter 399. An act concerning the places of holding certain terms of the supreme judicial court and the court of common pleas in the county of Essex.
- Chapter 406. An act for the suppression of certain common nuisances.
- Chapter 410. An act to secure the daily reading of the Bible in the public schools of the commonwealth.
- Chapter 413. An act in relation to the houses of correction in the county of Essex.
- Chapter 414. An act to secure general vaccination.
- Chapter 416. An act in relation to voting lists.
- Chapter 418. An act in addition to an act relative to "proprietors of lands, wharves, general fields and other real estate lying in common."
- Chapter 421. An act to establish a board of pilot commissioners for this commonwealth.
- Chapter 422. An act supplementary to an act entitled "an act to regulate the sale of wheat, corn, and other grains and meals."
- Chapter 426. An act relating to divorces.
- Chapter 427. An act relative to the justices of the court of common pleas.
- Chapter 429. An act for the better establishment of the police court in the city of Fall River.
- Chapter 429. An act to regulate billiard rooms and bowling alleys.
- Chapter 431. An act to secure to mechanics and others payment for labor and materials by them expended.
- Chapter 432. An act in addition to the several acts concerning executors, administrators, guardians and trustees.
- Chapter 434. An act regulating the passing of vessels through railroad drawbridges.
- Chapter 438. An act in relation to the action of dower.
- Chapter 439. An act to secure a decennial census.
- Chapter 440. An act in addition to an act entitled "an act establishing the salaries of certain public officers."
- Chapter 442. An act to establish a state reform school for girls.
- Chapter 445. An act relative to state paupers.
- Chapter 446. An act to prevent and punish incendiarism.
- Chapter 449. An act to establish the superior court of the county of Suffolk.
- Chapter 451. An act concerning filling vacancies in the office of prudential committee.
- Chapter 452. An act to secure the safety of passengers at railroad crossings.
- Chapter 453. An act relating to the attachment of real estate conveyed in fraud of creditors.
- Chapter 457. An act for the better protection of orchards, nurseries, gardens, &c.
- Chapter 463. An act to establish a police court in the town of Chicopee.
- Chapter 464. An act relative to lunatics or insane persons.
- Chapter 468. An act in addition to "an act to require certain corporations to make returns to assessors."
- Chapter 469. An act for abating nuisances.
- Chapter 470. An act concerning the purchase of spirituous and intoxicating liquors for town agents.
- Chapter 477. An act in addition to an act to establish a police court in the town of Chelsea.
- Chapter 478. An act in further addition to "an act relating to joint stock companies."
- Chapter 486. An act in addition to "an act to appoint a board of commissioners in relation to alien passengers and state paupers."
- Chapter 487. An act for the punishment of embezzlement by county, city, and town officers.
- Chapter 489. An act to protect the rights and liberties of the people of the commonwealth of Massachusetts.

### One Thousand Eight Hundred and Fifty-six.

- Chapter 1. An act establishing a probate court in North Andover, in the county of Essex.
- Chapter 4. An act in addition to an act to establish a police court in the town of Pittsfield.
- Chapter 10. An act to establish the salaries of the justices of the supreme judicial court.
- Chapter 13. An act in addition to an act to establish a police court in the town of Chicopee.
- Chapter 18. An act requiring a new promise of an insolvent debtor, after his discharge, to be in writing.
- Chapter 24. An act respecting the custody of minor children whose parents are living separate.
- Chapter 34. An act amending the forty-ninth chapter of the Revised Statutes respecting the manner of sureties surrendering their principals in bail bonds.
- Chapter 37. An act to establish the office of assistant clerk of the supreme judicial court in the county of Suffolk.
- Chapter 38. An act giving further remedies in equity.
- Chapter 39. An act relating to the unlawful use of private property.
- Chapter 40. An act in addition to an act in relation to female convicts.
- Chapter 47. An act respecting naturalization.
- Chapter 53. An act to authorize county commissioners to administer oaths and affirmations.
- Chapter 60. An act to change the name of the state reform school for girls.
- Chapter 63. An act in addition to "an act to establish a state reform school for girls."
- Chapter 67. An act to establish the office of assistant attorney for the county of Suffolk.
- Chapter 68. An act in relation to lands mortgaged to the commonwealth.
- Chapter 70. An act relating to the venue of certain actions.
- Chapter 71. An act in further addition to an act in relation to law library associations.
- Chapter 96. An act in relation to the Boston clearing house.
- Chapter 96. An act relating to the return of writs in civil actions before justices of the peace and police courts.
- Chapter 99. An act concerning husband and wife.

- Chapter 102. An act in addition to "an act suppressing horse racing," approved on the eighth day of April, in the year eighteen hundred and forty-six.
- Chapter 108. An act relating to lunatics and idiots.
- Chapter 113. An act concerning the observance of certain days.
- Chapter 116. An act concerning the registry of deeds in the town of Littleton.
- Chapter 118. An act to provide for the election of a register of deeds for the county of Suffolk.
- Chapter 121. An act to prevent the evasion of the laws for the suppression of lotteries.
- Chapter 122. An act establishing a probate court in North Bridgewater, in the county of Plymouth, and changing the time of holding the probate court at Middleborough, in said county.
- Chapter 123. An act to punish frauds in officers of corporations, and other persons.
- Chapter 125. An act relating to lists of jurors.
- Chapter 130. An act in relation to appeals in criminal cases.
- Chapter 135. An act in addition to an act entitled "an act for the removal of insane convicts from the state prison."
- Chapter 136. An act in relation to ordering a stay or supersedeas of executions.
- Chapter 142. An act relative to the house of correction and jail in the county of Plymouth.
- Chapter 150. An act relating to the support of certain inmates of the state reform school for boys and the state industrial school for girls.
- Chapter 151. An act in relation to the salary of the physician and surgeon of the state prison.
- Chapter 152. An act concerning the jurisdiction of justices of the peace.
- Chapter 157. An act concerning the election of civil officers.
- Chapter 158. An act in addition to an act to establish the city of Springfield.
- Chapter 162. An act in relation to probate courts in the county of Worcester.
- Chapter 164. An act in relation to the rights of children under guardianship to attend the public schools.
- Chapter 165. An act in addition to the acts relating to the annual reports of railroad corporations.
- Chapter 169. An act authorizing the release of dower in behalf of married women who are insane.
- Chapter 170. An act in relation to the court of common pleas in and for the county of Middlesex.
- Chapter 171. An act concerning state paupers.
- Chapter 172. An act concerning the police court of the city of Worcester.
- Chapter 173. An act concerning the election of clerks of courts and other county officers.
- Chapter 174. An act in addition to an act concerning mortgages of personal property.
- Chapter 177. An act concerning the salary of the register of probate for the county of Dukes County.
- Chapter 181. An act in addition to an act concerning agricultural societies which receive the bounty of the state.
- Chapter 184. An act in addition to an act in relation to law library associations.
- Chapter 185. An act in relation to sheriffs and their deputies.
- Chapter 186. An act concerning idle and disorderly persons.
- Chapter 202. An act to authorize the appointment of auditors, and defining their powers.
- Chapter 206. An act in relation to certain proceedings in probate courts.
- Chapter 209. An act relating to the record of attachments.
- Chapter 214. Section two only of an act for the protection of the fisheries on the south side of the town of Barnstable and district of Marshpee.
- Chapter 216. An act concerning general fields.
- Chapter 223. An act to punish fraud by the sale of adulterated milk.
- Chapter 224. An act concerning the election of representatives in congress.
- Chapter 229. An act in addition to an act relative to superintendents of schools.
- Chapter 239. An act in relation to the assessment and collection of taxes.
- Chapter 245. An act for the better protection of the public at railroad crossings.
- Chapter 246. An act to secure uniformity of fees in the courts of this commonwealth.
- Chapter 247. An act establishing boards of trustees for the state lunatic hospitals and in addition to the acts concerning lunatic hospitals.
- Chapter 249. An act in relation to the salary of the district-attorney of the middle district.
- Chapter 252. An act concerning insurance companies.
- Chapter 253. An act to authorize the governor to appoint commissioners of deeds in foreign countries.
- Chapter 254. An act relating to the registry of deeds for the northern district of Middlesex.
- Chapter 255. An act in relation to the returns of votes.
- Chapter 256. An act concerning the planting of shade trees.
- Chapter 257. An act in relation to insolvent debtors.
- Chapter 262. An act in addition to an act to establish a police court in the town of Milford.
- Chapter 264. An act limiting the time for the organization of corporations.
- Chapter 265. An act in addition to an act concerning probate courts in the county of Dukes County.
- Chapter 266. An act changing the time of holding a term of the probate court in the county of Bristol.
- Chapter 268. An act in addition to "an act concerning judges of probate."
- Chapter 271. An act concerning the sale of onions in this commonwealth.
- Chapter 277. An act to fix the salary of the district-attorney for the south-eastern district.
- Chapter 278. An act to prevent waste.
- Chapter 284. An act in addition to the several acts for the relief of insolvent debtors, and the more equal distribution of their effects.
- Chapter 292. An act concerning the indexing of deeds.
- Chapter 294. An act relating to the board of commissioners on alien passengers and state paupers.
- Chapter 298. An act to establish additional terms of the court of common pleas in the county of Worcester.
- Chapter 307. An act to divide the commonwealth into districts for the choice of councillors.
- Chapter 308. An act concerning the superior court of the county of Suffolk, and the court of common pleas.

## One Thousand Eight Hundred and Fifty-seven.

- Chapter 1. An act concerning clerks of county commissioners.
- Chapter 12. An act concerning the police court of the city of Worcester.
- Chapter 15. An act to amend the twenty-first section of the eighty-third chapter of the Revised Statutes, relative to the bonds of registers of probate.
- Chapter 16. An act concerning probate courts in the county of Berkshire.
- Chapter 24. An act to amend the four hundred and seventy-eighth chapter of the acts of eighteen hundred and fifty-five.
- Chapter 26. An act for the better establishment of the police court of the city of Springfield.
- Chapter 30. An act to amend chapter fifty-five of the Revised Statutes relating to fisheries.
- Chapter 34. An act in addition to an act relating to bans of marriage.
- Chapter 36. An act to change the place of holding the September meeting of the county commissioners of Middlesex.
- Chapter 38. An act to amend "an act concerning the indexing of deeds."
- Chapter 40. An act in relation to public reports and documents.
- Chapter 43. An act concerning the trustees of African Methodist Episcopal churches.
- Chapter 50. An act concerning loan fund associations.
- Chapter 51. An act concerning police courts.
- Chapter 55. An act in addition to an act relating to leasehold estates.
- Chapter 58. An act to amend chapter two hundred and fifteen of the laws of one thousand eight hundred and fifty-six, entitled "an act relating to the organization of corporations for educational, charitable, and religious purposes."
- Chapter 60. An act for taking the census of the legal voters and inhabitants of this commonwealth.
- Chapter 64. An act in relation to the removal of snow and ice from the sidewalks of cities.
- Chapter 65. An act concerning the state house.
- Chapter 66. An act in relation to the jurisdiction of the supreme judicial court.
- Chapter 71. An act in relation to the accounts of executors, administrators, and guardians, and the examination of persons suspected of embezzlement in certain cases.
- Chapter 78. An act to establish the terms of the court of probate in the county of Middlesex.
- Chapter 80. An act concerning the offence of obtaining property under false pretences.
- Chapter 82. An act relating to the pasturing of cattle or other animals in streets or ways.
- Chapter 84. An act authorizing transcripts of town or city records.
- Chapter 88. An act in relation to the form of bond to be given by executors who are residuary legatees.
- Chapter 97. An act for the better preservation of municipal records.
- Chapter 105. An act in addition to an act entitled "an act in relation to mortgages."
- Chapter 107. An act regulating the payment of fines and forfeitures in criminal cases.
- Chapter 111. An act to establish the salary of the assistant-clerk of the superior court of the county of Suffolk.
- Chapter 112. An act to establish terms of the probate court for the county of Barnstable.
- Chapter 115. An act to authorize cities and towns to set out shade trees.
- Chapter 122. An act concerning the state prison at Charlestown.
- Chapter 126. An act concerning the criminal courts in the county of Worcester.
- Chapter 132. An act to define the rights of the children of non-resident parents to attend public schools.
- Chapter 133. An act relating to land taken for public ways.
- Chapter 139. An act to protect mariners and ship-owners from imposition.
- Chapter 141. An act to amend and consolidate the several acts concerning imprisonment for debt and the punishment of fraudulent debtors.
- Chapter 149. An act concerning petitions for partition.
- Chapter 153. An act to authorize the overseers of the poor to remove destitute and neglected children to almshouses.
- Chapter 156. An act to prevent the fraudulent sale of personal property leased or hired.
- Chapter 157. An act concerning the jurisdiction of police courts.
- Chapter 159. An act establishing terms of the probate court for the county of Bristol.
- Chapter 160. An act concerning wilful and malicious injuries to dams and reservoirs.
- Chapter 163. An act in addition to an act relating to mill and reservoir dams.
- Chapter 168. An act concerning railroad returns.
- Chapter 171. An act concerning election returns.
- Chapter 178. An act relating to trustees under railroad mortgages.
- Chapter 185. An act in addition to "an act concerning the election of civil officers."
- Chapter 189. An act relating to common schools.
- Chapter 191. An act concerning the appointment of members of the legislature to certain offices.
- Chapter 194. An act in relation to gaming, billiard tables, and bowling alleys.
- Chapter 196. An act relating to the salaries of certain officers of the state prison.
- Chapter 198. An act concerning the location of horse railroads.
- Chapter 200. An act relating to the trustee process.
- Chapter 206. An act concerning the branches to be taught in the public schools, and for other purposes.
- Chapter 209. An act relating to persons committed to the state lunatic hospitals, not having a known settlement in this commonwealth.
- Chapter 212. An act in relation to crossings.
- Chapter 214. An act in addition to the several acts giving jurisdiction in equity to the supreme judicial court.
- Chapter 215. An act concerning the donation of Henry B. Rogers to the state industrial school for girls at Lancaster.

- Chapter 221. An act exempting certain classes of vessels from compulsory pilotage.  
 Chapter 222. An act concerning school-houses and other public buildings.  
 Chapter 224. An act authorizing passports.  
 Chapter 225. An act concerning drains and sewers in the city of Boston.  
 Chapter 228. An act relating to divorces.  
 Chapter 229. An act to perpetuate the evidence of title to real property obtained under mortgage deeds containing a power of sale.  
 Chapter 231. An act in relation to worthless bank bills.  
 Chapter 232. An act relating to auctioneers.  
 Chapter 233. An act concerning the crime of embezzlement.  
 Chapter 235. An act to exempt certain articles from attachment and execution.  
 Chapter 237. An act in relation to common carriers.  
 Chapter 240. An act concerning the annual returns of railroads.  
 Chapter 243. An act to regulate the use of proxies in banks.  
 Chapter 247. An act to amend the sixty-sixth chapter of the acts of eighteen hundred and fifty-five relative to the distribution of attachments.  
 Chapter 248. An act relating to the inspectors of the hospital on Rainsford Island.  
 Chapter 249. An act in addition to an act to protect the property of married women.  
 Chapter 255. An act in relation to the trial of libels for divorces.  
 Chapter 258. An act relating to imprisonment on execution.  
 Chapter 259. An act in addition to an act concerning insurance companies.  
 Chapter 260. An act to provide for the approval of bills of purchases for the state prison.  
 Chapter 261. An act relating to applications to the general court.  
 Chapter 264. An act concerning the police court of the town of Milford.  
 Chapter 265. An act concerning the police court in Lowell.  
 Chapter 266. An act concerning vacancies in school committees.  
 Chapter 267. An act respecting trials by the court.  
 Chapter 269. An act in addition to an act establishing the salaries of certain public officers.  
 Chapter 270. An act providing for the election of school committees.  
 Chapter 272. An act establishing the salary of the clerk of the courts for the county of Hampden.  
 Chapter 274. An act establishing the salaries of the judges and registers of courts of insolvency.  
 Chapter 275. An act in addition to an act relating to joint stock companies and for other purposes.  
 Chapter 277. An act in addition to an act concerning the indexing of deeds.  
 Chapter 280. An act relating to the sale of deadly poisons.  
 Chapter 284. An act concerning the discipline of the state prison.  
 Chapter 287. An act in relation to the powers of county commissioners in laying out ways across railroads.  
 Chapter 289. An act in relation to fugitives from justice.  
 Chapter 290. An act to secure returns from keepers of jails and overseers of houses of correction.  
 Chapter 291. An act in addition to "an act to regulate the use of railroads."  
 Chapter 292. An act concerning the draining of low lands.  
 Chapter 293. An act concerning the purchase and sale of spirituous liquors by city and town agents.  
 Chapter 294. An act in addition to an act to establish a police court in the town of Adams.  
 Chapter 295. An act in relation to the returns of votes.  
 Chapter 296. An act to exempt from levy on execution the homestead of a householder.  
 Chapter 300. An act concerning cases arising under the forty-ninth chapter of the Revised Statutes concerning the maintenance of bastard children.  
 Chapter 301. An act in relation to the taxation of horses.  
 Chapter 305. An act to enable parties in civil actions and process.  
 Chapter 306. An act for the equalization of taxes.  
 Chapter 307. An act relating to elections.  
 Chapter 308. An act to apportion representatives to the several towns.  
 Chapter 309. An act to divide the commonwealth into forty districts.  
 Chapter 310. An act to arrange the senatorial districts into classes.  
 Chapter 311. An act concerning elections of representatives in the general court.  
 Chapter 319. Resolves for the payment of certain general expenses.  
 Chapter 49. Resolves in aid of the state library.

### One Thousand Eight Hundred and Fifty

- Chapter 1. An act to establish a better system for the administration of the courts.  
 Chapter 2. An act to regulate the compensation of members of the general court.  
 Chapter 3. An act to perpetuate the evidence of foreclosure.  
 Chapter 5. An act concerning the branches to be taught in the common schools.  
 Chapter 6. An act in addition to an act concerning elections.  
 Chapter 7. An act relating to the distribution of the annual salary of the judges of the courts.  
 Chapter 10. An act in addition to "an act to regulate the use of railroads."  
 Chapter 12. An act relating to the state lunatic hospitals.  
 Chapter 23. An act concerning complaints before justices of the peace.  
 Chapter 25. An act in addition to an act entitled "an act to amend the act in relation to the estates of deceased paupers."  
 Chapter 26. An act relating to the estates of deceased paupers.  
 Chapter 31. An act relating to costs of coroners' and fire inquests.

- Chapter 82. An act concerning the records of courts of insolvency.
- Chapter 88. An act in addition to an act entitled "an act relating to the descent and distribution of estates of intestates."
- Chapter 84. An act to amend the two hundred and sixth chapter of the acts of the year eighteen hundred and fifty-one, to provide further remedy for creditors.
- Chapter 40. An act relating to the trustee process.
- Chapter 43. An act relating to the exemption of the property of widows and unmarried females from taxation.
- Chapter 44. An act to amend the forty-seventh chapter of the acts of the year eighteen hundred and fifty-six respecting naturalisation.
- Chapter 45. An act relating to police courts and justices of the peace.
- Chapter 46. An act in addition to "an act in relation to public reports and documents."
- Chapter 47. An act in relation to alimony.
- Chapter 48. An act concerning investments of savings banks and mutual insurance companies.
- Chapter 49. An act in relation to returns by agents of foreign insurance companies.
- Chapter 54. An act to amend the thirty-first section of the two hundred and eighty-fourth chapter of the acts of the year eighteen hundred and fifty-six.
- Chapter 55. An act to amend the four hundred and thirty-first chapter of the acts of eighteen hundred and fifty-five relating to liens of mechanics and others.
- Chapter 56. An act relating to dower.
- Chapter 57. An act concerning the care of infant children of female convicts.
- Chapter 61. An act to amend "an act in relation to the office of the secretary of the board of education."
- Chapter 62. An act in addition to an act entitled "an act to exempt from levy on execution the homestead of a householder."
- Chapter 64. An act concerning the commitment of lunatics to hospitals.
- Chapter 67. An act to prevent the use of blanks for counterfeiting bank bills, certificates, and notes.
- Chapter 68. An act concerning the measurement of fruit and vegetables.
- Chapter 69. An act to increase the amount of specie in the commonwealth.
- Chapter 70. An act concerning notes payable on demand.
- Chapter 71. An act to amend the act providing for trial by jury before justices of the peace in certain cases.
- Chapter 72. An act relating to executors' bonds.
- Chapter 78. An act relating to the sale of property of insolvent debtors.
- Chapter 76. An act concerning proxies.
- Chapter 77. An act concerning the discipline of jails and houses of correction.
- Chapter 78. An act to establish the compensation of the lieutenant-governor, and the members of the executive council.
- Chapter 88. An act concerning the employment of children in manufacturing establishments.
- Chapter 84. An act to establish a police court in the town of Taunton.
- Chapter 85. An act to abolish the land office.
- Chapter 93. An act to change the jurisdiction in matters of probate and insolvency.
- Chapter 108. An act in addition to the several acts in relation to the police court of the city of New Bedford.
- Chapter 104. An act concerning officers attending on the supreme judicial court in the county of Suffolk.
- Chapter 106. An act to provide for the preservation of books, reports, and laws received by cities and towns from the commonwealth.
- Chapter 107. An act in addition to "an act concerning the duties of assessors."
- Chapter 109. An act concerning the writ of certiorari.
- Chapter 110. An act concerning the state industrial school for girls.
- Chapter 111. An act to establish the salary of the district-attorney for the middle district.
- Chapter 114. An act in addition to an act to punish frauds in officers of corporations.
- Chapter 115. An act requiring certain additional bank returns.
- Chapter 116. An act concerning the officers of the Protestant Episcopal church.
- Chapter 117. An act concerning guardians and wards.
- Chapter 118. An act to fix the salaries of the district-attorneys for the northern, eastern, and southern districts.
- Chapter 119. An act concerning the preferred claims of operatives against insolvent debtors and corporations.
- Chapter 120. An act in relation to the court of common pleas for the county of Worcester.
- Chapter 121. An act concerning discharges in insolvency.
- Chapter 122. An act in relation to special administrators.
- Chapter 122. An act defining the salary of the superintendent of alien passengers.
- Chapter 123. An act in relation to conveyances and devises of estates for religious purposes.
- Chapter 126. An act relating to criminal jurisdiction in Boston harbor.
- Chapter 126. An act to establish a police court in the town of Gloucester.
- Chapter 127. An act concerning the partition of real estate.
- Chapter 128. An act to provide for the better administration of the criminal law.
- Chapter 141. An act concerning the assignees of insolvents.
- Chapter 142. An act concerning fees in certain cases in insolvency.
- Chapter 143. An act in relation to limited partnerships.
- Chapter 144. An act to protect the rights of stockholders in corporations.
- Chapter 145. An act in relation to school districts.
- Chapter 150. An act to amend an act concerning insurance companies.
- Chapter 151. An act relating to public diversions.
- Chapter 152. An act in addition to an act concerning public amusements.
- Chapter 154. An act in relation to the crime of murder.
- Chapter 155. An act to amend the two hundred and eighty-ninth chapter of the acts of the year eighteen hundred and fifty-two, concerning returns by justices of the peace.

- Chapter 156. An act to define the salary of the adjutant-general.
- Chapter 158. An act to regulate certain matters of finance, (except sections two, four, five, six, seven, eight, nine, and sixteen.) [Excepted sections repealed by 1867, 178, § 14.]
- Chapter 159. An act for the appointment of watchmen and fireman to the state house.
- Chapter 161. An act in addition to an act relating to persons committed to the state lunatic hospitals, not having a known settlement in this commonwealth.
- Chapter 162. An act relating to the government of prisons.
- Chapter 164. An act concerning the survey of lumber, ornamental wood, and ship timber.
- Chapter 165. An act to amend the act to increase the amount of specie in the commonwealth.
- Chapter 166. An act concerning the militia.
- Chapter 168. An act in relation to the state almshouses.
- Chapter 170. An act in relation to delinquent agents of foreign insurance companies.
- Chapter 172. An act concerning the purchase and sale of spirituous and intoxicating liquors for town agents.
- Chapter 175. An act to amend "an act to protect the rights and liberties of the people of the commonwealth of Massachusetts."
- Chapter 177. An act for the better establishment of the board of insurance commissioners.
- Chapter 2. Resolve relating to the state library.

### One Thousand Eight Hundred and Fifty-nine.

- Chapter 7. An act concerning the mileage of members of the council.
- Chapter 16. An act extending the time for taking out executions.
- Chapter 22. An act relating to the printing of the documents of the public series.
- Chapter 25. An act to amend an act to authorize cities and towns to establish and maintain public libraries.
- Chapter 27. An act relating to returns of elections.
- Chapter 36. An act relative to the specific performance of written contracts.
- Chapter 37. An act concerning real actions.
- Chapter 39. An act to amend an act entitled "an act to secure the safety of passengers at railroad crossings."
- Chapter 56. An act in addition to the several acts concerning courts of probate in the county of Dukes County.
- Chapter 57. An act relating to school reports.
- Chapter 60. An act concerning the selection and employment of teachers in public schools.
- Chapter 61. An act in addition to an act to provide for the adoption of children.
- Chapter 62. An act relating to paying fees of witnesses.
- Chapter 64. An act to increase the salary of the assistant-librarian and clerk of the secretary of the board of education.
- Chapter 67. An act relating to damages from alterations in highways.
- Chapter 69. An act in relation to assignees of insolvent debtors.
- Chapter 80. An act in addition to "an act providing for the election of school committees."
- Chapter 81. An act relating to fugitives from justice.
- Chapter 89. An act concerning the attendance of children at school in adjoining towns.
- Chapter 91. An act to revive the land office.
- Chapter 98. An act relating to school books and changes in the same.
- Chapter 96. An act to prevent cruelty to animals.
- Chapter 101. An act in relation to the diet, clothing, and bedding of convicts in the state prison.
- Chapter 102. An act relating to a return of pickled and smoked fish.
- Chapter 103. An act establishing the pay of members of school committees.
- Chapter 104. An act concerning issues of stock by corporations.
- Chapter 106. An act to amend an act relating to the fisheries.
- Chapter 107. An act concerning the state lunatic hospitals.
- Chapter 108. An act to amend an act concerning the discipline of jails and houses of correction.
- Chapter 110. An act in relation to judges of probate and insolvency.
- Chapter 114. An act relating to the taxation of ships.
- Chapter 116. An act to punish and remedy the wrongful detention of bank bills.
- Chapter 118. An act to equalize taxation.
- Chapter 119. An act concerning the investment or deposit of money belonging to the estates of insolvent debtors.
- Chapter 121. An act concerning elections.
- Chapter 125. An act in relation to railroad crossings.
- Chapter 126. An act relative to horse and steam railroad crossings.
- Chapter 127. An act to secure the payment of rents.
- Chapter 128. An act relating to the division of water rights.
- Chapter 131. An act relating to bail in criminal cases.
- Chapter 132. An act providing for the registration of surveys made in laying out highways.
- Chapter 133. An act to establish the salary of the second clerk in the office of the secretary of the commonwealth.
- Chapter 136. An act concerning school districts.
- Chapter 138. An act concerning the police court in Pittsfield.
- Chapter 139. An act in relation to returns from jails and houses of correction.
- Chapter 142. An act exempting certain articles from execution.
- Chapter 143. An act in addition to the several acts concerning special administrators.
- Chapter 146. An act in addition to an act concerning insurance companies.
- Chapter 148. An act establishing the compensation of bank commissioners.
- Chapter 155. An act relating to the reports of the warden and inspectors of the state prison.
- Chapter 157. An act relating to poll taxes.
- Chapter 158. An act relating to exhibitions of the fighting of birds and animals.

- Chapter 160. An act relating to proof in criminal cases.
- Chapter 161. An act relating to the probate court in the county of Nantucket.
- Chapter 162. An act relating to the removal of actions.
- Chapter 163. An act fixing the salaries of county commissioners.
- Chapter 164. An act to establish the salary of the clerk in the office of the adjutant and quartermaster-general of the commonwealth.
- Chapter 166. An act relating to the collection of money fraudulently withheld by attorneys at law.
- Chapter 167. An act in addition to an act to establish a police court in the town of Chicopee.
- Chapter 170. An act concerning the state reform school for boys.
- Chapter 171. An act concerning collectors of taxes.
- Chapter 172. An act in addition to the acts in relation to law library associations.
- Chapter 174. An act regulating the manufacture and sale of bread.
- Chapter 176. An act to establish the pay of the watchmen of the state house.
- Chapter 177. An act concerning the public charitable and reformatory institutions of the commonwealth.
- Chapter 178. An act relating to the salary of the register of probate and insolvency for the county of Dukes County.
- Chapter 183. An act relating to attachments of real estate.
- Chapter 185. An act concerning actions on judgments.
- Chapter 188. An act in addition to the several acts concerning the attendance of children at school.
- Chapter 189. An act in relation to dividends by savings banks.
- Chapter 190. An act extending the jurisdiction of the justices' court of the county of Suffolk.
- Chapter 193. An act relating to the titles of justices of the peace designated and commissioned to try criminal cases.
- Chapter 194. An act concerning the liability of assignees for costs in certain cases.
- Chapter 196. An act establishing the superior court.
- Chapter 198. An act in relation to the carrying of dangerous weapons.
- Chapter 200. An act relating to the attorney's fee in certain criminal prosecutions.
- Chapter 201. An act relating to returns of police justices.
- Chapter 203. An act relating to farmers' clubs.
- Chapter 206. An act in addition to an act to punish fraud by the sale of adulterated milk, and to provide for sealing measures used in the sale of milk.
- Chapter 207. An act to abolish the office of crier of the courts.
- Chapter 209. An act concerning the delivery of freight to connecting railroads.
- Chapter 214. An act in addition to an act to establish the state industrial school for girls.
- Chapter 215. An act relative to coroners' and fire inquests.
- Chapter 216. An act fixing the salaries of district-attorneys.
- Chapter 218. An act to amend the sixty-ninth and the one hundred and sixty-fifth chapters of the acts of the year eighteen hundred and fifty-eight.
- Chapter 219. An act relating to billiard rooms and bowling alleys.
- Chapter 221. An act in addition to an act to regulate certain matters of finance.
- Chapter 223. An act in relation to conveyances of land or flats belonging to the commonwealth.
- Chapter 224. An act to authorize the appointment of a surveyor-general of lumber, and the establishment of a lumber district.
- Chapter 226. An act concerning dogs.
- Chapter 226. An act relating to military accounts.
- Chapter 227. An act concerning taxation and returns of corporations to assessors.
- Chapter 228. An act concerning applications for juries to assess damages.
- Chapter 229. An act relating to boarding-house keepers.
- Chapter 230. An act concerning the competency of witnesses.
- Chapter 231. An act to limit the contracting of county debts.
- Chapter 232. An act relating to agricultural societies.
- Chapter 233. An act concerning returns by officers of precepts in criminal cases.
- Chapter 234. An act to prevent the infringement of trade marks.
- Chapter 236. An act in addition to an act to protect mariners and ship-owners from imposition.
- Chapter 236. An act relating to police courts.
- Chapter 237. An act to regulate proceedings in equity.
- Chapter 238. An act relating to schools, school committees, and school returns.
- Chapter 239. An act relating to the bastardy process.
- Chapter 240. An act relating to officers in the state prison.
- Chapter 241. An act relating to blank writs.
- Chapter 245. An act in addition to an act to authorize the business of loan and fund associations.
- Chapter 246. An act concerning mortgages of personal property.
- Chapter 247. An act to define the right to take kelp and other sea-weed between high and low water mark.
- Chapter 248. An act concerning persons sentenced to the state prison.
- Chapter 249. An act in relation to the control and management of jails and houses of correction.
- Chapter 250. An act in addition to an act entitled "an act to regulate the measurement of charcoal," passed May fourth, eighteen hundred and fifty-three.
- Chapter 252. An act to abolish the school district system.
- Chapter 253. An act relating to county treasurers.
- Chapter 254. An act in relation to insane convicts in the state prison.
- Chapter 255. An act concerning state paupers.
- Chapter 257. An act relating to the compensation and duties of sheriffs.

- Chapter 258. An act concerning the taxation of minors.
- Chapter 259. An act to regulate the use of steam-boilers.
- Chapter 260. An act in addition to "an act concerning electric telegraph companies and electric telegraphing."
- Chapter 261. An act for the further protection of trees on highways.
- Chapter 262. An act relating to the annual returns of railroad corporations.
- Chapter 263. An act relating to schools.
- Chapter 264. An act in addition to "an act providing for the election of school committees."
- Chapter 267. An act in addition to an act to authorize the business of banking.
- Chapter 269. An act establishing the salary of the messenger in the office of the secretary of the commonwealth.
- Chapter 274. An act concerning the terms of the supreme judicial court in the county of Worcester.
- Chapter 275. An act relating to terms of courts.
- Chapter 276. An act in addition to an act to authorize the appointment of a surveyor-general of lumber, and the establishment of a lumber district.
- Chapter 282. An act relating to the jurisdiction in criminal cases.
- Chapter 284. An act concerning the supreme judicial court.
- Chapter 285. An act for the establishment of a nautical school.
- Chapter 286. An act concerning the reform school, and the nautical branch of the same.
- Chapter 289. An act declaring the territorial limits of the commonwealth and establishing the limits of certain counties.
- Chapter 291. An act relating to the writ of habeas corpus.
- Chapter 294. An act for the removal of constables for cause in cities.

HOUSE OF REPRESENTATIVES, *December 28, 1859.*

Passed to be enacted.

CHARLES HALE, *Speaker.*

IN SENATE, *December 28, 1859.*

Passed to be enacted.

CHARLES A. PHELPS, *President.*

*December 28, 1859.*

Approved.

NATH. P. BANKS.



# GENERAL ACTS

PASSED SUBSEQUENTLY TO THE PASSAGE OF THE REVISED  
STATUTES, AND EXPRESSLY REPEALED BEFORE THE  
PASSAGE OF THE GENERAL STATUTES.

Statutes		Expressly repealed by Statutes of			Statutes		Expressly repealed by Statutes of		
Year	Chapter	Year	Chapter	Section	Year	Chapter	Year	Chapter	Section
1836	154	1846	170	8	1843	79	1846	196	1
"	208	1854	453	44	1844	42	1846	170	8
"	231	1846	128		"	82	1854	453	44
"	238	1856	163		"	154	1857	141	31
"	255	1837	224	8	1845	17	1854	453	44
"	256	1843	40	2	"	55	1854	453	44
1837	128	1840	68	5	"	76	1848	313	11
"	147	1849	81	2	"	100	1849	65	8
"	166	1844	127	1	"	111	1847	69	7
"	170	1856	103	1	"	153	1845	248	1
"	183	1840	66	9	"	157	1849	209	2
"	192	1854	453	44	"	253	1846	190	
"	238	1848	313	11	1846	82	1856	252	56
1838	14	1843	43		1847	137	1857	139	3
"	23	1839	120		"	150	1856	479	
"	35	1854	453	44	"	248	1854	453	44
"	124	1840	68	6	"	264	1857	232	8
"	126	1857	232	4	"	273	1854	453	44
"	157	1840	1		1848	81	1854	453	44
"	178	1854	453	44	"	85	1849	29	2
"	182	1856	113	8	"	134	1848	255	2
1839	75	1857	235	2	"	168	1857	141	31
1840	68	1844	51		"	210	1857	78	1
"	68	1857	60	5	"	236	1857	141	31
"	76	1848	233		"	290	1856	231	7
"	90	1848	232		1849	41	1857	16	2
"	96	1848	313	11	"	104	1854	453	44
1841	7	1856	103	1	"	127	1855	305	
"	123	1843	11	1	"	139	1850	277	4
1842	9	1854	453	44	"	143	1850	25	
"	21	1854	453	44	"	144	1857	263	4
"	31	1847	69	7	"	213	1856	239	6
"	46	1848	70		1850	42	1857	232	8
"	56	1844	154	13	"	212	1857	141	31
"	95	1844	159	9	"	218	1856	239	6
1843	22, § 2	1847	208	2	"	239	1858	5	3
"	39	1844	161		"	245	1859	235	15

Statutes		Expressly repealed by Statutes of			Statutes		Expressly repealed by Statutes of		
Year	Chapter	Year	Chapter	Section	Year	Chapter	Year	Chapter	Section
1850	269	1851	308	2	1853	855	1858	43	2
"	272	1851	92	3	"	376	1854	453	44
"	274	1857	206	8	"	389	1854	450	2
"	279	1854	453	44	1854	68	1855	249	3
"	286	1855	197	5	"	72	1856	81	1
"	314	1851	323	1	"	295	1856	39	3
1851	90	1854	453	44	"	317	1855	192	1
"	157	1854	453	44	"	345	1856	81	1
"	165	1854	453	44	"	453	1856	282	56
"	170	1854	453	44	1855	38	1857	16	2
"	226	1853	36	3	"	37	1855	432	2
"	233	1852	312	86	"	52	1859	129	
"	239	1852	313	2	"	73	1859	89	2
"	257	1852	1	1	"	91	1856	113	3
"	262	1857	235	2	"	106	1859	253	2
"	281	1854	453	44	"	119	1855	398	
"	301	1857	150		"	167	1856	125	2
"	307	1852	185	1	"	219	1857	262	2
"		1856	101	3	"	220	1855	466	2
"	309	1857	206	4	"	238	1857	236	18
"	325	1852	312	86	"	264	1857	225	2
"	331	1854	453	44	"	296	1856	181	3
"		1855	228	7	"	300	1857	200	2
"	340	1857	298	18	"	412	1856	171	4
1852	197	1859	234	4	"	436	1857	206	3
"	227	1854	453	44	"	437	1857	151	
"	231	1854	453	44	"	444	1857	141	21
"	274	1857	37	1	"	443	1857	157	3
"	281	1857	141	31	"	453	1856	99	2
"	284	1853	36	3	"	480	1856	1	1
"	286	1857	232	3	1856	101	1857	266	4
"	301	1857	275		"	188	1857	305	3
"	311	1854	453	44	"	215	1857	56	6
"	322	1855	215	39	"	273	1857	78	1
1853	153	1857	254		"	291	1857	262	2
"	238	1856	179	1	1857	192	1858	70	2
"	236	1857	37	1	"	226	1858	113	2
"	333	1854	453	44	"	303	1853	166	3
"	343	1854	38	6	1853	139	1859	225	15
"	349	1855	426	2	"	167	1859	104	3

# A GLOSSARY

OF SUCH WORDS AND PHRASES CONTAINED IN THESE STATUTES AS BELONG  
TO FOREIGN LANGUAGES, AND THE MORE OBSCURE OF SUCH  
OTHERS AS ARE MERELY TECHNICAL.\*

PREPARED BY VIRTUE OF CHAPTER 138 OF THE RESOLVES OF 1869.

## A.

**ABATEMENT**, plea of, is when for any default the defendant prays that the writ or plaint do abate; that is, cease against him for that time. *Bowrier*.

**AD DAMNUM**, (*to the damage*.) The declaration of the plaintiff's case in all personal and mixed actions concludes with the words "to the damage of the plaintiff, as he says, the sum of—;" and this is called the "*ad damnum*."

**ALIAS**, (*another*.) When prefixed to writ or execution, it means the second; as, *alias execution*, *alias writ of capias*, the second execution, the second writ of capias.

**ALIEN**. A subject of *another* government. An unnaturalized foreigner.

**ALIENATION**, an act by which the property and possession of real estate is transferred from one person to another, which may be done by deed, devise, or by matter of record.

**ALIMONY**, the allowance which is made by order of court to a woman for her support out of her husband's estate, upon being separated from him by divorce, or pending a suit for divorce.

**ANSWER** is in this state used technically to mean the statement of the matter intended to be relied upon by the defendant in avoidance of the plaintiff's action, and takes the place of special pleas in bar, and the general issue, except in real and mixed actions and actions before justices of the peace and police courts. (See p. 656.)

In equity cases defences may be made by answer. (See p. 659.)

**ASSUMPSIT**, action of, a form of action for the recovery of damages for the non-performance of a contract not under seal, nor of record. This action is abolished in this state, and the cases to which it ap-

plied may now be brought by action of contract. (See p. 653.)

**ATTAINDER**, the stain, forfeiture, and corruption of blood which followed upon being condemned for certain crimes. The consequences of attainder were, 1st, forfeiture of all the felon's estate, real and personal; 2d, the corruption of his blood by which his posterity were prevented from inheriting property from him, or through him for any remote ancestor.

**BILL OF ATTAINDER**, a bill brought into parliament for attainting persons condemned for high treason.

By the constitution of the United States, art. 1, sect. 10, states are prohibited from passing any bill of attainder; and by art. 3, sect. 3, congress has "power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted."

**AUDITA QUERELA**, a writ applicable to the case of a defendant against whom a judgment has been recovered, and who is therefore in danger of execution, or perhaps actually in execution, grounded on some matter of discharge which happened after the judgment, and not upon any matter which might have been pleaded as a defence to the action. *Bowrier*.

**AVOIRDUPOIS**, a weight of which a pound contains sixteen ounces; its proportion to a pound Troy being as seventeen to fourteen. It is the weight of larger and coarser commodities. *Webster*.

## B.

**BONA FIDE**. *In good faith*.

**BONUS**, a premium.

**BOTTOMRY**, a contract in the nature of a mortgage of a ship, on which the owner borrows money to enable him to fit out the ship, or to purchase a cargo for a voy-

\* In the preparation of this glossary, the editors have endeavored to give the ordinary meaning of the words and phrases as they are used in this volume, in concise language, and with such illustrations and citations as may be useful to the general reader. Many of them have also other significations when used in different connections; and the general definitions to most of them, probably, are subject to limitations and modifications which cannot well be given in a glossary, but may be found in dictionaries, and in treatises on the various subjects.

age proposed, and he pledges the keel or bottom of the ship as a security for the repayment, and it is stipulated that if the ship should be lost in the course of the voyage by any of the perils enumerated in the contract, the lender also loses his money; but if the ship should arrive in safety, then he shall receive back his principal and also the interest agreed upon, which is generally called marine interest, however this may exceed the legal rate of interest. Not only the ship and tackle, if they arrive safe, but also the person of the borrower, is liable for the money lent and the marine interest. *Boatw.*

## C.

**CAPIAS**, (*take you, or that you take.*) A writ or process commanding the officer to take the body of a person is called a "capias," or a "writ of capias." A writ directing the officer to "attach the goods and estate of the defendant, and for want thereof to take his body," is called, a "writ of capias and attachment."

**CAPITAL CRIME**, a crime punishable with death.

**CERTIORARI**, the name of a writ issued by the supreme court to certain courts of inferior jurisdiction, commanding them to certify and return to the supreme court their records in a particular case, in order that any errors or irregularities which appear in the proceedings may be corrected. It is the proper process by which to bring before the supreme court for investigation the doings of county commissioners. It lies for the purpose of correcting errors in proceedings which are not according to the course of the common law. (See p. 743.)

It does not lie to the probate court. (8 Cush. 529.)

**CIVIL LAW**, the municipal code of laws of the Romans. Degrees of kindred are by statute, in this state, to be computed according to the rules of the civil law. (See p. 474.)

Such computation is from one of the persons whose relationship is sought, up to the common ancestor, and then from the common ancestor, down to the other of such persons.

**COCULUS INDICUS**, (*Indian berry.*) A poisonous fruit, sometimes used in the adulteration of liquors.

**COMMON LAW**, in England, the unwritten law, founded on custom and deriving its force and authority from the universal consent and immemorial practice of the people.

In Massachusetts, "Our ancestors, when they came into this new world, claimed the common law as their birthright, and brought it with them, except such parts as were judged inapplicable to their new state and condition."

"So much of the common law of England as our ancestors brought with them, and of the statutes then in force, altering or amending it; such of the more recent statutes as have been since [before the revolution] adopted in practice; and the ancient usages aforesaid, may be considered as forming the body of the common law of Massachusetts." (8 Pick. 816, 817.) (See also 1 Mass. 61. 2 Met. 123. 16 Pick. 182.)

**CONTINGENT REMAINDER**, the remainder of an estate in lands limited to take effect on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding particular estate, in which case such remainder never can take effect.

**CONUSOR**. As used in the statutes of Massachusetts, *conusor* means the party entering into a recognizance for debt, and *conussee* the party to whom the debt is payable in such recognizance. (See p. 771.)

**CORRUPTION OF BLOOD**. See **ATTAINDER**.

**COPARCENARY**. **COPARCENERS**. In England, an estate in coparcenary arose where a person seized of lands and tenements in fee-simple or in tail died, leaving only daughters, sisters, aunts, or other *female heirs*; in which case the estate descended to all such daughters, sisters, &c., jointly. By custom, in certain cases, an estate descended to all the male heirs, who became coparceners.

In this state, lands descend to all the children equally, and there is no substantial difference between coparceners and tenants in common. *Greenleaf's Crime.*

**COUNT**, derived from the French *compte*, a narrative. The statement of each cause of action included in the plaintiff's suit. The declaration which includes the statement of the plaintiff's whole case may include one or more counts for the same or different causes of action.

**COURT OF RECORD**, technically, a court having common law jurisdiction, with a clerk or other officer required by law to keep a record of its proceedings. Such are the supreme judicial and superior courts.

Police courts, having clerks, are courts of record. (3 Met. 168.)

Courts of insolvency are so named by statute. (See p. 581.)

Probate courts were not courts of record, (14 Mass. 227,) till so declared by act of 1862, ch. 68, § 3.

**COVERTURE**, the state or condition of a married woman.

**CROZED**. Crozing is the making of that place in coats into which the head is fitted, being done with a cooper's instrument called a "crose."

**CURTESY**. When a married woman is, during coverture, seized of real estate, her husband is entitled to hold the same after her death, for his life, if, during their marriage, they had issue born alive. This is called an "estate by the curtesy." The rights given to married women to hold property to their sole and separate use do not take away the husband's estate by the curtesy.

**DEFEASANCE.** A collateral deed, made at the same time with a conveyance, containing conditions upon the performance of which the estate may be defeated.

The terms of the condition of a mortgage, if made by a separate instrument at the same time with the deed, would be a defeasance, and the two instruments constitute a mortgage. (See p. 716.)

To be valid against third parties, the defeasance must, in this state, be recorded in the registry of deeds. (See p. 467.)

**DEMURRER, (to wait or stay.)** "When the declaration, plea, or replication, &c., appears on the face of it, and without reference to extrinsic matter to be defective either in substance or form, the opposite party may in general demur, which has been defined to be a declaration that the party demurring will 'go no further,' because the other has not shown sufficient matter against him." *Chitty*.

"It confesses the facts to be true, as stated by the opposite party, but denies that, by the law arising upon these facts, any injury is done to the plaintiff, or that the defendant has made out a legitimate excuse." *Blackstone*.

For particular cases, in which by statute parties may raise issues in law by demurrer, see p. 655.

**DISCLAIMER, (to abandon, to renounce.)** A plea in a real action, by which the defendant declares that he has nothing and claims nothing in the demanded premises, and wholly disavows and disclaims to have anything therein.

"It resembles a plea of tender of the whole sum demanded in an action of debt or assumpsit, in which case the defendant admits the plaintiff's right to the thing in controversy, but shows that he had no right of action for it." (13 Mass. 442.)

**DISCONTINUANCE,** respecting real estate. An alienation made or suffered by the tenant in tail, or other tenant seised in right of another, by which the issue in tail, or heir, or successor, or those in reversion or remainder, are driven to their action and cannot enter. It is used to distinguish those cases where a party, whose freehold is ousted, can restore it only by action, from those in which he may restore it by entry. *Bowyer*.

By statute, in this state, a discontinuance does not take away or defeat any right of entry, or of action for recovery of real estate. (See p. 692.)

**DISSEISIN.** See *SEIZIN*.

**DISTRAIN, DISTRESS.** A distress is the taking of personal property, without process of law, from the possession of a wrong doer, as a pledge to a party injured for redress of the injury, or the performance of some duty, or for the satisfaction of some claim.

Collectors may distrain for payment of taxes. (See pp. 81, 82.)

Field drivers and others may distrain cattle going at large or doing damage. (See p. 186.)

**DURESS.** "An actual or threatened violence of a man's person contrary to law, to compel him to enter into a contract, or to discharge one." *Bowyer*.

## E.

**EASEMENT.** A liberty, privilege, or advantage in land without profit, distinct from ownership of the soil; such as a right of way over the land of another, or in a public highway, &c.

**ESCHEAT.** The falling or passing of real estate to the government in the nature of reversion, by reason of there being no person legally entitled to hold the same.

In this state only two causes of escheat have ever been recognised — one when an alien purchased land, and could not hold against the government; and the other, when a person died without heirs, seised of land which he had not devised by will. (9 Mass. 368.) The first of these is abolished by statute. (See p. 473.) The second is still the law. (See p. 474.)

**EX OFFICIO.** *By virtue of office.*

**EK PARTE, (of the one part.)** Any thing done when only one party is present is said to be done *ex parte*.

**EK POST FACTO.** Something done after, and in relation to, a former act. After the deed is done; retrospective. *Worcester*.

An *ex post facto law* is, technically, one which renders an act punishable in a manner in which it was not punishable when it was committed. *Fletcher v. Peck*, 6 Cranch, 87.

By article 1, section 10, of the constitution of the United States, the states are prohibited from passing such a law. (See p. 5.)

It applies to laws respecting crimes only. (9 Mass. 368.)

**EXECUTORY DEVISE.** An executory devise of lands is such a disposition of them by will, that thereby no estate vests at the death of the deviser, but only on some future contingency. It differs from a remainder in three very material points: First, that it needs no particular estate to support it. Second, that by it a fee-simple or other less estate may be limited after a fee-simple. Third, that by this means a remainder may be limited of a chattel interest, after a particular estate for life created in the same. *Blackstone*.

It is a limitation by will of a future contingent interest in lands, contrary to the rules of limitation of contingent estates in conveyances at law. *Bowyer*.

## F.

**FEE, inheritance; FEE-SIMPLE, a simple inheritance.**

An estate in fee, or fee-simple, is an estate in lands held to a person, to him and his heirs forever, generally, absolutely, and simply, without mentioning what heirs.

**FEE-TAIL.** An estate in tail, or in fee-tail, is an estate in lands descendible to some particular heirs only of the person to whom it is granted, and not to his heirs general. *Blackstone. Cruise*.

**FELONY.** By statute in this state, any crime punishable by death or imprisonment in the state prison, and no other, is a felony. (See p. 825.)

**FEME COVERT.** A married woman.

**FORMEDON, writ of.** Upon an alienation of the tenant in tail, by which the estate in tail was discontinued, and the remainder or reversion is, by the failure of the particular estate, displaced and turned into a mere right, the remedy was by action of formedon, because the writ comprehends the *form* of the gift. *Bowyer*.

This writ is abolished in this state. (See p. 696.)

**FREEHOLD.** A freehold estate is an interest in lands held in fee, for life, or for some other uncertain period. An estate for years, however long the time,

is not, by common law, a freehold, because its duration is certain.

But by statute, in this state, whoever holds lands under a lease for one hundred years or more, so long as fifty years thereof remain unexpired, is regarded as a freeholder. (See p. 471.)

## G.

**GENERAL ISSUE.** A form of plea by a defendant making a general denial of the whole of the allegations in the declaration, indictment, or complaint against him.

This plea is abolished in this state in all civil actions, except real and mixed actions and actions before justices of the peace and police courts, and an answer substituted. (See p. 656.)

## H.

**HABEAS CORPUS**, (*have the body*.) The writ of habeas corpus is a writ issued by a judge, magistrate, or court, commanding that some person held in custody or under restraint shall be brought before the same or some other judge, magistrate, or court at a certain time or place for the purpose of inquiry into the legality of the restraint, or of having the person in court, for trial as a party, or as a witness, or for some other cause making his personal attendance necessary.

**HEREDITAMENTS.** An inheritance or an estate which descends to one by succession.

**Incorporeal Hereditament** is such a right issuing out of, or concerning, or annexed to, or exercisable within a thing corporate or tangible, such as an annuity charged on lands, and granted to a person and his heirs.

**HYPOTHECATION**, a certain kind of pledge of personal property without delivery to the pledgee, originally peculiar to the civil law.

In the common law, cases of hypothecation, in the strict sense of the civil law, that is, of a pledge of a chattel, without possession by the pledgee, are scarcely to be found. Cases of bottomry bonds, and claims for seamen's wages against ships, are the nearest approach to it; but these are liens and privileges rather than hypothecation. *Story*.

## I.

**INUENDO.** An averment which explains the meaning, or points out the application of some words or matters expressed, commonly used in actions of slander, but now, by statute, not necessary. (See p. 606.)

**INSIMUL COMPUTASSENT**, (*they had accounted together*.) The technical name of a count in the plaintiff's declaration for a balance found due him by the parties on accounting together. (See p. 604.)

**INTERLOCUTORY.** Intermediate. An interlocutory judgment, decree, or order, is one entered between the commencement and the end of a suit, deciding some particular point, without making a final decision of the matter in issue.

**ISSUE.** In relation to kindred, it means all persons who have descended from a common ancestor.

In pleading, it is the class or result of the pleadings, by which the single material point depending in the suit is presented for determination.

## J.

**JOINT TENANTS, ESTATES IN JOINT TENANCY**

Applied to real estate. The peculiar incident of an estate in joint tenancy, distinguishing it from an estate in common, is the right of survivorship, by which, upon the death of any joint tenant, the entire estate goes to the survivors or survivor, and the last survivor holds it to himself and his heirs. It is a life estate to all but the last survivor.

## L.

**LEVY.** A seizure. Commonly used in the statutes to express the taking of property on execution to satisfy judgments, or on warrants for the collection of taxes.

**LIEN.** In its most extensive signification, it includes every case in which real or personal property is charged with or held for the payment of any debt or duty. In a more limited sense, it is the right of detaining the property of another until some claim is satisfied. *Bourcier*.

## M.

**MANDAMUS**, (*we command*.) A mandamus is a writ issuing in the name of the commonwealth, from the supreme judicial court, and is directed to some inferior court, or to some person or corporation exercising a public authority, commanding them to do some particular thing specified in the writ, which it belongs to their office or their duty to perform. And generally in all cases of omissions or mistakes where there is no other adequate specific remedy, resort may be had to the writ.

**MESSUAGE.** Dwelling-house. A grant or devise of a messuage will pass a house and the buildings belonging to it, its curtilage, garden, and orchard, and the close on which the house is built. *Bowyer.*

**MINOR.** In England and the United States, a person, whether male or female, who has not attained the age of twenty-one years. Minors are also in law called *infants*.

**MISPRISION OF TREASON** is the bare knowledge and concealment of treason by being merely passive, and without any degree of assent thereto. Any assent makes the person a principal traitor.

**MITTIMUS**, (*we send.*) It is the name of a precept in writing, under the hand and seal of a justice of the peace, or, if issued by a court, under the seal of the court and signed by the clerk, directed to the jailer, commanding him to receive and safely keep the person named therein until he shall be delivered by due course of law.

## N.

**NISI**, (*unless.*) This word is used in legal proceedings to indicate that any order, &c., shall take effect at a given time, *unless* before that time the order, &c., is modified, or something else is done to prevent its taking effect.

**Nisi prius**, (*unless before.*) *Nisi prius*, applied to terms of court, denotes those terms at which jury trials are heard.

Cases in court are sometimes said to be *continued nisi*, which means that they are continued for a special purpose, and that they will be entered on the docket of the next term, *unless* they are before that time otherwise disposed of.

**NOL. PROSECD.** **NOLLE PROSEQUI**, (*is not desirous of prosecuting further.*) *Nol. proseed.*, applied to indictments and criminal prosecutions, indicates that the prosecuting officer has discontinued them.

**NOLO CONTENDERE**, (*I do not wish to contend.*) The name of a plea by a defendant to an indictment or criminal complaint, the legal effect of which is to admit the truth of the charges in the indictment or complaint, and upon which the defendant may be sentenced.

**NON COMPOS.** Not of sound mind, memory, or understanding. This is a generic term, and includes all the species of madness, whether arising from idioey, sickness, lunacy, or drunkenness. *Bowyer.*

In this state, by statute, a person *non compos* is included in the words "insane person" and "lunatic." (See p. 51.)

**NON TENURE.** A plea in a real action, by which the defendant asserts that he does not hold either the whole land, or some part of the land mentioned in the plaintiff's declaration. (See **DISCLAIMER**.)

**NUNCUPATIVE WILL.** A will made verbally.

A nuncupative will or testament is a verbal declaration by a testator of his will before a competent number of legal witnesses. *Bowyer.*

In this state, by statute, a "soldier in actual military service, or a mariner at sea, may dispose of his wages and other personal estate by a nuncupative will." (See p. 477.)

## O.

**OLEOMETER.** An instrument for testing the quality or purity of oil.

**OUSTER, OUSTED.** An ouster is the actual turning out, or keeping excluded, the party entitled to possession of any real property corporeal. Any continuing act of exclusion from the enjoyment constitutes an ouster.

Ousted indicates the condition of the party so kept excluded.

**OYER**, (*to hear; the hearing.*) It is a term used in pleading, and denotes that the person making the plea asks that he may hear the bond, or deed, or instrument, read, which is declared on.

## P.

**PETIT TREASON**, (*little treason.*) This offence was formerly the killing of a master by his servant; of a husband by his wife; of his superior by an ecclesiastical person, either secular or regular. It was called *petit* (little) treason because of the civil or ecclesiastical connections between the person killed and the one taking his life. In this state there is no distinction between *petit treason* and murder. (See p. 791.)

**PLEA.** A term in pleading denoting the defendant's answer by matter of fact to the plaintiff's declaration. The word is sometimes erroneously used to denote the argument or address of counsel, either to the jury or the court.

**POSTHUMOUS**, (*after the death of.*) A posthumous child is one born after the death of its parent. Posthumous children by our statutes are considered as living at the death of their parents, for the purpose of inheritance of property. (See p. 475.)

**PRIMA FACIE**, (*on the first view or appearance; at first sight.*) *Prima facie* evidence of a fact, is that which in law is sufficient to establish the fact, unless rebutted.

"Prima facie evidence is competent evidence tending to prove a proposition of fact, and if it is not rebutted or controlled by other evidence, will stand as sufficient proof of such proposition of fact." (1 Gray 500.)

**PROCHEIN AMI**, (*next friend.*) Where one as a minor, cannot sue in his own name, he may sue in the name of some person competent to sue, who is called his *prochein ami*, and he is then said to bring the suit by his *prochein ami*, or next friend.

**PROFERT**, (*produces.*) **PROFERT IN CURIA**, (*produces in court.*) Where a plaintiff declares on a deed, or a defendant pleads a deed and makes title under it, he does it with a *profert*, or *profert in curia*, by declaring that he "brings here into court the said writing obligatory."

**PRO RATA.** Proportional.

**PRO TEMPORE, PRO TEM.** For the time.

**PROVOST MARSHAL.** An officer of the army, whose duties are to take steps for the prosecution of

crimes and offences against military discipline, to seize and secure deserters, to punish marauders, &c., to take charge of prisoners, and superintend the execution of punishments.

## Q.

**QUARANTINE.** The space of time (*forty days*, more or less) during which a ship or vessel, coming from a port or place infected, or supposed to be infected with a contagious or epidemic disease, is detained, after her arrival, within certain designated limits, generally called the quarantine ground, and during which time her crew and passengers are required to remain on board, without intercourse with those on shore.

The word *quarantine*, by the law of England, indicated the space of forty days, during which the widow of a landed man had a right to remain in her husband's principal mansion immediately after his death. The right of the widow was also called her *quarantine*.

**QUARE CLAUSUM.** This is an abbreviation for *quare clausum fregit*, "wherefore he broke the close." It is generally used in connection with actions of tort or trespass; as, "*trespass quare clausum*." In such connection, it means an action to recover damages for breaking and entering the *close* (or premises) of the plaintiff.

**QUASHED, QUASH**, (*overthrown, annulled, made void*.) Where proceedings in courts, whether civil or criminal, are clearly irregular and void, the court will *quash* them; that is, declare them void.

**QUORUM** signifies the number of persons belonging to a legislative assembly, or corporation, or a society, or other body, required to transact business.

The word is also used to designate a class of justices of the peace, as justices of the peace *and of the quorum*, to which class of justices of the peace some special duties are assigned, and without whose presence, or the presence of one of them, such duties cannot be transacted.

The duties imposed by statute, in this state, upon justices of the peace and of the quorum, are the discharge of poor debtors arrested on mesne process or execution, and the approval of bail bonds.

**QUO WARRANTO**, (*by what authority or warrant*.) A writ issued from the supreme judicial court, in the name of the commonwealth, against any person or corporation that usurps a franchise or office, commanding the sheriff of the county to summon the defendant to appear before the court from which the writ issued to show by what authority (*quo warranto*) he claims the franchise, or office mentioned in the writ.

## R.

**RECOGNIZANCE.** An obligation of record, entered into before a court, or officer duly authorized for that purpose, with a condition to do some act required by law which is therein specified, or pay the sum of money therein mentioned. In criminal cases, the condition is, that the defendant shall appear before the proper court to answer there to the charges against him, and meanwhile to keep the peace, and be of good

behavior. Witnesses are required to recognize to testify.

In civil cases, recognizances are entered into by bail, conditioned that they will pay, upon certain contingencies, the debt, interest, and costs recovered by the plaintiff. There are also recognizances under the authority of statutes. (See pp. 770, 772.)

**REMAINDER.** An estate in remainder is an estate limited to take effect and be enjoyed after another estate is determined. As if a man seized in fee simple granteth lands to A for twenty years, and after the determination of the said term, then to B and his heirs forever; here A is tenant for years, and B has the remainder in fee. *Blackstone*.

Contingent or executory remainders are where the estate in remainder is limited to take effect either to a dubious and uncertain person, or upon a dubious and uncertain event; so that the particular estate may chance to be determined, and the remainder never take effect. *Blackstone*.

Vested remainders are where the estate is invariably fixed, to remain to a determinate person after the particular estate is spent. *Blackstone*.

**REPLEVIN.** An action of replevin lies for the recovery specifically (in specie) of any personal chattel which has been wrongfully taken and detained from the owner's possession, together with damages for the detention.

**REPLICATION.** A term of pleading. It is the reply which the plaintiff makes to the defendant's plea or answer.

**REPRISAL**, writ of. (See *WITHERHAM*.)

**RES JUDICATA**, (*a matter adjudged*.) A question settled by judicial decision.

**RESPONDENTIA.** A loan of money on maritime interest, on goods laden on board of a ship, which in the course of the voyage must from their nature be sold or exchanged, upon this condition, that if the goods should be lost in the course of the voyage, by any of the perils enumerated in the contract, the lender shall lose his money; if not, that the borrower shall pay him the sum borrowed, with the interest agreed upon. The contract is called *respondentia*, because the money is lent on the personal responsibility of the borrower. *Boutier*. (See *BOTTOMRY*.)

**REVERSION.** An estate in reversion is the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. *Blackstone*.

## S.

**SCIRE FACIAS**, (*that you make known or show cause*.) The name of a judicial writ, founded upon some record and requiring the defendant to show cause why the plaintiff should not have the advantage of such record.

**SEISIN.** The possession of an estate of freehold. In the absence of other evidence, a deed of land duly acknowledged and recorded, raises a presumption that the grantor had sufficient seisin to enable him to convey, and also vests the legal seisin in the grantee. (15 Pick. 186.)

Disseisin is an ouster of the rightful owner from the seisin or estate in the land and the commencement



of a new estate in the wrong doer. Notorious and exclusive adverse possession without right, constitutes a disseisin. (5 Met. 83.)

Disseised, unlawfully ousted, or expelled from, and kept out of the possession of, an estate of freehold.

**SEVERAL TENANCY.** A tenant in severalty is he who holds lands and tenements in his own right only, without any other person being joined or connected with him in point of interest during his estate therein. *Blackstone*.

**SOLE CORPORATION.** A sole corporation consists of only one person, to whom and his successors belongs that legal perpetuity, the enjoyment of which is denied to all natural persons.

**SOLE TENANCY.** A sole tenant is one who holds lands in his own right, without being joined with any other. *Bouvier*.

**SUBORNATION OF PERJURY.** Procuring another person to commit perjury. (p. 812.)

"To constitute subornation of perjury, the party charged must have procured the commission of the perjury, by inciting, instigating, or persuading the guilty party to commit the crime." (5 Met. 245.)

**SUBPOENA, (under penalty; at your peril.)** It is a summons issued by a court or magistrate to compel a witness to attend before a court or magistrate, or some person or persons named in the process at the time and place therein mentioned, to testify what he may know relating to the cause or matter described therein. It usually concludes with words similar to these: "Hereof fail not, at your peril."

**Subpoena duces tecum, (at your peril bring with you.)** This is a process issued by a court for compelling the attendance of a witness, with a direction requiring the witness to "bring with him" and produce to the court the books, papers, &c., named in the process, that are in his possession, or under his control, tending to elucidate the matter in issue.

Subpoena, in equity practice. A mandatory writ or process from the court, directed to and requiring the person or persons, or corporation, &c., named therein, to appear at the time and place mentioned therein, and answer the matters charged against it, him, or them.

**SUMMONS.** The name of a writ commanding the sheriff, or other authorized officer, to notify a party to appear in court to answer a complaint made against him and in the said writ specified, on a day therein mentioned. *Bouvier*.

**SUPERSEDEAS, (that you stay or supersede.)** The name of a writ containing a command to stay the proceedings at law. *Bouvier*.

## T.

**TAIL, ESTATE.** (See **FREE TAIL**.)

Tenant in tail. The holder of an estate tail is called a tenant in tail.

**TALESMAN.** A person returned by order of the court from among the bystanders, or from the county at large, to serve as a juror in order to complete the panel. In this state, not more than five talesmen can be returned for one jury, as the statutes provide that there must be on the jury "not less than seven of the

jurors who were originally drawn and summoned." (See p. 682.)

**TERMINI.** Limits, boundaries.

**TORT.** A legal injury, a wrong. In this state, actions of tort include actions of trespass, trespass on the case, trover, and actions for penalties. (See p. 653.)

**TRESPASS.** An unlawful act committed with force directly applied to the person or property.

Trespass on the case. The name of an action instituted for the recovery of damages caused by an injury unaccompanied with force, or where the damages sustained are only consequential. *Bouvier*.

**TROVER, (to find.)** The name of an action brought to recover the value of personal chattels wrongfully converted by another to his own use. *Bouvier*.

**TROY WEIGHT.** A scale of weight used for weighing gold, silver, diamonds, &c. The pound contains twelve ounces, or five thousand seven hundred and sixty grains.

## V.

**VENIRE, VENIRE FACIAS, (to come, that you cause to come.)** The name of a writ issued by the clerk of the court, directed to the sheriff, commanding him to cause to come before the court on a specified day, from certain towns of the county named in the writ, a certain number of persons qualified to serve as jurors.

**VENUE OF ACTIONS.** The venue is the county from which the jury are to come who are to try the issue. *Bouvier*.

As used in the statutes, it means the county where the action is to be brought. (See pp. 620, 621.)

## W.

**WASTE.** A spoil, or destruction in houses, gardens, trees, or other corporeal hereditaments, to the disherison of him that hath the remainder or reversion in fee simple or fee tail. *Blackstone*.

**WITHERNAM.** The name of a writ used in connection with the action of replevin.

In this state, when, in an action of replevin to determine the legality of the distraint or impounding of cattle, the defendant has judgment that the cattle be returned and restored, a writ of return may issue to carry a judgment of that kind, when rendered before a justice of the peace, into execution, by which writ the officer is directed to restore to the defendant the same beasts that the plaintiff had replevied from him. If the officer upon this writ makes return that the property is withheld so that he cannot get it, a writ of *withernam* may issue, by which the officer is directed to take other goods of the plaintiff in withernam, (by way of reprisal,) and hold them until the plaintiff restores to the defendant the beasts he took from him by the writ of replevin. In this state, the writ of withernam is called a writ of reprisal. (See pp. 732, 733.)



# INDEX.

## A.

### ABATEMENT.

of actions brought in wrong county.....620, 661  
 non-tenure, disclaimer, several tenancy, and joint  
 tenancy may be pleaded in, or in bar  
 in writs of entry..... 698  
 upon plea of, judgment of single judge to be  
 final..... 586  
 pleaded for non-joinder of other defendants,  
 plaintiff may have leave to amend,  
 506, 657, 658, 759  
 provisions respecting pleas in, to apply to com-  
 plaints under laws relating to mills..... 759  
 of complaints for flowing land, on account of  
 defects of form, &c., new may be brought  
 within one year..... 759  
 of proceedings for assessments of damages for  
 land taken by railroads, new may be  
 brought within one year..... 859  
 of real or personal action in certain cases, new  
 may be brought within one year, although  
 otherwise barred by statutes of limita-  
 tion.....771, 778  
 Answer in, may be made of any defence which  
 might have been made by plea in abate-  
 ment..... 654  
 when overruled or amendment made by plaintiff  
 on account thereof, defendant to answer  
 or plead to merits.....655, 656  
 may be amended by defendant, or he may on  
 leave answer over..... 658  
 when issue of fact is joined on, how final judg-  
 ment to be entered..... 658  
 forms of..... 657, 658  
 Not to be had, in writs, processes, &c., for  
 circumstantial errors, nor defects of  
 form..... 657, 898  
 for defects which can be, and are on leave  
 amended..... 658  
 by non-joinder of other defendants, against  
 whom action of contract is barred by  
 limitation..... 779  
 by reason of use of fictitious name for an un-  
 known defendant..... 622  
 by parties becoming insane..... 650  
 by marriage of female plaintiff or defendant,... 650  
 by return or release of husband after action  
 brought by wife in her own name by  
 reason of his abandoning her, or of his  
 imprisonment..... 542

### ABATEMENT—continued.

by resignation, removal, or death of public  
 officers or statute trustees..... 650  
 of superintendents of industrial and state re-  
 forms schools.....417, 420  
 of assignees of insolvent debtors..... 589  
 of executors and administrators.....650-652  
 of public officers, in case of process of man-  
 damus..... 744  
 by death of parties in complaints for flowing  
 land..... 759  
 in action for waste..... 709  
 in petitions for jury in highway cases..... 235  
 in petitions for partition..... 649  
 of trustee, in trustee process.....725, 726  
 of parties in real and personal actions and pro-  
 ceedings, general provisions.....648, 649, 650  
 in insolvency proceedings..... 683  
 In criminal cases, pleas of, to an indictment, may  
 be refused to be received by court until  
 proved..... 840  
 of indictments and complaints not to take place  
 for certain defects of form..... 842  
 Of nuisances.....453, 710  
 Of taxes.....79, 80, 81

### ABDUCTION.

of unmarried female, under sixteen years, for a clan-  
 destine marriage, how punished..... 817  
 of unmarried women for prostitution..... 817  
 prosecution therefor limited to two years..... 817

### ABORTION.

punishment for unlawfully procuring or attempting  
 to procure..... 818  
 for aiding and assisting..... 818  
 for advertising means for procuring..... 818

### ABSENT DEFENDANT.

when and how liable to actions.....645, 646  
 personal actions against, when may be main-  
 tained..... 645  
 actions of tort against several, to be conducted  
 against any one absent as if he were sole  
 defendant..... 646  
 so in real and mixed actions..... 647  
 of contract may proceed against those who are  
 served with process, although some de-  
 fendant is absent..... 647  
 and against him who is absent only in the  
 same manner as if he were the only  
 defendant..... 647

**ABSENT DEFENDANT — continued.**

Cross actions against,	645
if plaintiff is out of state, defendant may bring cross action,	645
if there are several defendants, each may bring such action, and set off judgments,	645
writ in such cases, how served,	645, 646
actions may be continued to enable absent parties to attend, or execution to be set off,	646
not subject to other provisions respecting absent defendants,	646
Service of writs against, how made in different cases,	623, 646, 647
summons or copy to be left at last and usual place of abode, or with tenant, agent, or attorney,	623
if he has no such abode in the state, tenant, agent, or attorney, officer need make no further service, except, &c.,	623
if there is a co-defendant, summons or copy for absent defendant to be left with him,	623
in real actions, summons or copy to be left with tenant or occupant of, or on conspicuous place on premises,	623
Further notice to be given where service is defective, or defendant is out of state, or his residence unknown,	623, 646
may be ordered on suggestion of plaintiff,	646
may in any case, when defendant does not appear, be ordered by court,	646
cases to be continued until such notices have been given,	646
how given in cases before justice of the peace,	605
Judgment and execution against,	646, 647
not appearing and answering after notice given as ordered by court, to be defaulted, and judgment to be entered against,	606, 646
execution on such judgment in personal action not to be taken out within one year, unless plaintiff gives bond,	605, 646
bond to be deposited with clerk,	646
if execution so issued is levied on real estate, absent defendant may retake same on review in certain cases,	646
if judgment is for seisin in a real action, bond need not be given,	646
writ of seisin in such case may issue and be levied,	646
if judgment is reversed on review, defendant may have restitution of his land,	646
when part only of defendants in actions of contract are absent, how judgment rendered,	646
effect of such judgment on liability of other parties,	647
action on judgment obtained by default in certain cases subject to same defence as upon review,	662
May have review as of right, within one year after judgment by default,	747
and on petition and leave of court, within one year after notice of judgment,	747
On petitions for partition,	649, 701-703
how notified when proceedings are pending in supreme or superior court,	699
in probate court,	703
agent for, to be appointed when petition is pending in probate court,	703

**ABSENT DEFENDANT — continued.**

may have new partition within three years after judgment,	701, 702
in proceedings for the enforcement of liens,	703
<b>ABUSE.</b>	
of female child under ten years of age,	730
<b>ABUSES.</b>	
and errors in inferior courts, how corrected by supreme court,	621
<b>ACADEMIES.</b>	
preceptors and teachers of, incorporated, exempt from serving as jurors,	699
to impress principles of piety, temperance, &c.,	715
<b>ACCESSORY.</b>	
<b>BEFORE THE FACT.</b>	
to burning, by wilfully, &c., cutting, &c., ball rope, injuring fire engine, &c., within twenty-four hours of fire,	736
convicted of three distinct larcenies at same term, how punished,	736
to larceny of real estate,	739
jurisdiction in such cases,	739
to a felony, how to be punished,	825, 835
how, when, and where to be tried,	836
<b>AFTER THE FACT.</b>	
to burning, by wilfully, &c., cutting, &c., ball rope, injuring fire apparatus, &c., preventing the giving of an alarm, or obstructing the extinguishing of fires,	736, 737
to larceny of real estate,	736
jurisdiction in such cases,	739
to a felony, who to be deemed, and how punished,	826
how, when, and where to be tried,	836
<b>ACCIDENT AND MISTAKE.</b>	
suits in cases of, may be brought in supreme judicial court in equity,	659
<b>ACCOUNT.</b>	
money of, to be dollar, cent, and mill,	22
otherwise made, not vitiated, but to be reduced to dollars, &c.,	22
<b>ACCOUNT CURRENT.</b>	
in actions to recover balance due on, limitation to run from last item proved,	771, 773
<b>ACCOUNTS.</b>	
suits in equity upon such as cannot properly be ad-	

A

A

**ACQUITTAL.**

- when by reason of prisoner's insanity, to be so stated by jury..... 842
- Former, when a bar to proceedings against duellists, &c.,..... 792
- on the merits, a bar to subsequent prosecution for same offence..... 790
- on the ground of variance, or on exception to form, &c., of indictment, not a bar..... 790

**ACTIONS.**

- Divisions of personal, only three, contract, tort, and replevin..... 658
- of contract, to include assumpsit, covenant, and debt, except for penalties..... 658
- of tort, to include trespass, trespass on the case, trover, and all actions for penalties..... 658
- writ in, need not contain declaration unless an arrest is made..... 655
- of replevin..... 780-783
- Civil, to be commenced by original writ..... 621
- not barred by criminal proceedings for same offence..... 640
- unless such proceedings are stayed upon representation to party injured, &c., payment of costs..... 639, 640
- forms of, may be amended before final judgment..... 658
- may be commenced against unknown defendant by fictitious name..... 622
- against corporations and persons not liable to arrest, commenced by writ of attachment and summons..... 621, 622
- by and against married women, in what cases may be brought..... 538, 541, 650
- in what cases not to be brought against husband for wife's debts..... 588
- parties to, may manage their own in court, or specially authorize any person to act..... 615
- not to be brought against parties out of state, unless they have lived in state, or an attachment is made..... 645
- cross-actions against such parties may be brought for purposes of set-off..... 645
- (See *Absent Defendants*.)
- Where and how to be brought, in different cases..... 620, 621
- transitory, to be brought where one of the parties lives or has his usual place of business, if either lives in this state..... 620
- if neither lives in the state, may be brought in any county..... 620
- trustee process, in county where one of trustees dwells, or has his usual place of business..... 721
- whether local or transitory, by or against counties, where to be brought..... 621
- where, by or against corporations other than the city of Boston, or any county..... 621
- where, by or against towns, cities, parishes, religious societies, and school districts..... 621
- by or against Boston, may be brought in Suffolk, Essex, Middlesex, or Norfolk, or where plaintiff lives..... 621
- if brought in Suffolk, by Boston, may be removed by defendant to another county..... 621
- concerning land in different counties, may be brought in either county in certain cases..... 620, 621
- for forfeitures to be brought in county where offence was committed..... 621
- on recognizances..... 564, 641, 636, 636
- (See *Recognizances*.)

**ACTIONS—continued.**

- how brought, and judgment, &c., entered on bonds, &c., with penalties..... 685, 686
- (See *Bonds*.)
- upon judgments obtained upon default, subject in certain cases to same defence as upon review..... 662
- one action may be brought against persons severally liable on same contract..... 654
- declaration in such case..... 654
- trial may be had on different issues, according to order of court..... 654
- one or more executions may issue therein..... 654
- may, before final judgment, be amended so as to enable parties to maintain their case for causes intended..... 658
- cause of, to be deemed same for which action was brought, when, &c..... 662
- when so adjudged, conclusive of the facts against parties to the record..... 662
- other parties, not notified, not bound by such adjudication..... 662, 663
- may be brought in their own names by the purchasers of claims sold by assignees of insolvent estates..... 596
- what may be brought for money advanced for repairs of mills in different cases..... 761
- (See *Mills*.)
- By and against executors, &c., all actions which survive may be commenced and prosecuted by and against executors and administrators..... 651
- they may voluntarily take upon themselves the prosecution or defence of actions commenced by their deceased..... 648, 649, 651, 652
- or may be cited in..... 648, 652
- judgment, how entered when they do not appear..... 648
- they may apply to county commissioners in cases where deceased had a right of application, but did not apply before his decease..... 650
- actual damages only to be recovered against executors and administrators for torts committed by deceased..... 651
- proceedings in actions by and against executors and administrators..... 491, 494, 643, 649, 651, 652
- special administrator may maintain, but not liable to, by creditor..... 484
- not to be brought against executors, &c., after estate is represented insolvent, except for preferred debts, &c..... 496
- on bonds given by, how brought, &c..... 505
- (See *Executors, Administrators, Limitations, Surviving of Actions*.)
- Against officers and stockholders, liable for debts of corporations..... 309, 340, 386
- For damages for land taken for railroads, may be had anew in certain cases..... 353, 354
- Limitation of. (See *Limitation*.)..... 777-779
- Not abated, by circumstantial errors and defects of form..... 657, 836
- by plea or answer in abatement, if defect is amended..... 658
- by death, removal, resignation of public officers, assignees, and others..... 689, 650
- (See *Abatement*.)
- Continued, nisi, in supreme court, how judgment to be entered..... 657
- (See *Continuance*.)

**ACTIONS—continued.**

- Deemed at issue, when allegations are closed, or plea in real action is filed,..... 667
- Trial, by jury in, may be waived,..... 661
- Changes, in matters in, may be suggested on record,..... 662
- Costs, in, at law,.....780, 781
- those that might have been joined,..... 781
- where there are several counts, and some are found for plaintiff and some for defendant,..... 781
- Real and respecting real estate.
- of dower,..... 697
- of entry,.....692, 696
- for foreclosure and redemption of mortgages,.....712, 717
- of forcible entry and detainer,.....707, 708
- for partition of lands,.....696-706
- of petitions for settlement of titles,..... 696
- for private nuisances,.....710, 711
- of information for intrusion, &c.,.....717-719
- of waste and trespass on real estate,.....708-710

**ACTS AND RESOLVES. (See Laws.)**

- to be bound in separate volumes,..... 49
- acts of incorporation to be deemed public acts,..... 50
- list of repealed acts,.....906, 907

**ADJOURNMENT.**

- Of senate and house of representatives, respectively,.....20, 21
- Of general court,..... 23
- Of congress, or either house thereof,..... 3
- Of courts, in case of war, pestilence, or other calamity,..... 617
- Of supreme and superior courts, by any officer upon order of court,..... 618
- when judge is absent, how adjourned, and notice given by sheriff,..... 568
- from one shire town to another,..... 568
- Of probate courts, by the judge, as occasion requires,..... 577
- by register when judge is absent or office is vacant,..... 577
- Of courts of insolvency, judge may adjourn court or meeting of creditors,..... 581
- register may, when judge is absent or office is vacant,..... 582
- of meeting, business done at to have same effect as if done at original meeting,..... 581
- Of police courts, from time to time, to same or different places in district,..... 571
- to a future day, parties and witnesses in criminal cases not required to attend from day to day,..... 571
- Of cases before justices of the peace, to other times and places, as occasions require,..... 610
- not exceeding ten days in certain cases,..... 582
- when a justice fails to attend at time and place to which a civil process is returnable or continued, any other justice may adjourn case,..... 606
- Of sale of personal property taken on execution,..... 688
- not to exceed seven days at one time,..... 688
- notice of, how given,..... 688

**ADJUTANT-GENERAL. (See Militia.)**.....95, 101**ADMINISTRATION.**

- to whom granted, and in what order,..... 483
- not to be granted after twenty years,..... 483
- except when property accrues or first becomes known after that time,..... 483
- or when necessary to distribute the divi-

**ADMINISTRATION—continued.**

- debts of insolvent estate of deceased person,.....499, 510
- to be revoked on proof of will,..... 493
- jurisdiction of probate court in granting,..... 514
- court first taking cognizance of, in any case to retain jurisdiction throughout,..... 574
- first granted to extend to all estate of deceased in this state,..... 574
- when to be granted to public administrator,..... 493
- De bonis non, how and when granted, &c.,.....488, 513
- With will annexed, when to be granted,..... 493
- bond in such cases,..... 493
- during executor's minority,..... 493
- Special, when may be granted,..... 494
- Ancillary,..... 508

**ADMINISTRATORS.**

- who entitled to be, and in what order,..... 493
- of married woman, husband to be, unless, &c.,..... 493
- bond to be given with condition, &c.,..... 493
- to be approved by judge of probate court,..... 495
- when exempted from giving, for proceeds of sale of real estate,..... 506
- when new, may be required,..... 506
- provisions concerning surety, &c., on,.....506-507
- to give notice of appointment,..... 491
- to make affidavit of notice,..... 491
- to return inventory within three months,..... 498
- may foreclose mortgage,.....499, 490
- to hold premises in trust until redeemed,..... 490
- may sell real estate held in mortgage, or after foreclosure by obtaining license,..... 490
- Limitation of actions against, by creditors,..... 491
- when assets are received after two years,..... 491
- when action fails from defect in form, insufficient service, &c., new action may be commenced,..... 491
- proceedings when right of action accrues after two years,.....491, 492
- provisions not to affect rights of action against heirs,..... 492
- not liable to actions within a year, except, &c.,..... 492
- when not liable for deficiency of assets,..... 492
- when may be discharged on payment of whole estate, before notice of other demands,..... 492
- if he pays away part, and remainder of estate is insufficient to pay subsequent demands, when to be liable only for part that remains,.....492, 493
- if there are two or more such demands, he may represent estate insolvent,..... 493
- not liable to creditors, when estate is exhausted by paying preferred debts,..... 493
- when may demand security of legatee, &c., to refund,..... 493
- liability of, for unnecessary delay in collecting debts,.....493, 494
- claims of, &c., may be submitted to arbitration, or same decided by court, or jury, on appeal,..... 494
- to account for personal estate at appraisal,..... 494
- to be charged with increase, and allowed for decrease, of appraisal,.....494
- upon petition of, court may order sale of personal property and outstanding claims,.....494, 495
- may transfer mortgages,..... 495
- not chargeable with bad debts,..... 495
- chargeable with certain effects not in inventory, with income of real estate, if received,..... 495
- to render account within one year, and further accounts when required by the court,..... 495
- how liable for not rendering accounts,..... 495

ADMINISTRATORS — *continued.*

allowances to, for services, .....	496
costs against, how paid and allowed, .....	496, 661
duties and liabilities of, when estate is insolvent, .....	496, 499
may be sued after eighteen months, if question of insolvency of estate is not settled at that time, .....	499
penalty on, for neglect to settle accounts within six months of commissioner's return, .....	499
of trustee not required to accept trust, .....	501
powers and duties of, as to redeeming lands of intestate, &c., taken, &c., on execution, .....	523
register of probate and insolvency not to be in his county, .....	602
suits between co-administrators and their representatives, may be brought in equity in supreme court, .....	559
to pay in full judgment recovered for goods attached against the deceased as an officer, .....	648
may voluntarily take upon themselves the prosecution or defence of actions commenced by or against deceased, 648, 649, 651, 652 or may be cited in, .....	648, 652
if they do not appear in such cases, judgment, how entered, .....	648
may apply to county commissioners in cases where the deceased had a right of application, .....	650
in actions against, for tort committed by deceased, actual damages only to be recovered, .....	651
of a trustee, carrier, or depository, who recovers judgment for goods, or the value of goods belonging to others, not to take the same as assets of the estate, but to deliver them to the owner, .....	651
not to account for goods returned upon a judgment of return in replevin, .....	651
writ and execution against, on account of debts due by the deceased, not to issue against their bodies nor estate, .....	651
personally liable for costs in actions commenced or prosecuted by themselves, .....	651
execution in such case to be awarded against their bodies and estate personally, .....	651
when judgment is for debt and costs, two executions to issue, one for costs against administrator personally, and the other for debt against estate of deceased, .....	651
costs paid by, may be allowed in their accounts, .....	651
scire facias may be sued out against, on suggestion of waste, when execution recovered against, for debt of deceased, has been returned unsatisfied, .....	651
may in such case be issued by justices of the peace, .....	606
by or against, on judgments recovered for penalty of bond, covenant, or agreement, against deceased, when there are subsequent breaches, .....	686
liable in such action for whole debt, .....	651
death of, not to abate suit commenced, but same may be prosecuted by administrator de bonis non, .....	648, 652
dying after judgment by or against him, scire facias may be sued out by or against	

ADMINISTRATORS — *continued.*

- administrators de bonis non, and a new execution issued, .....	653
execution in such case, how to issue, .....	653
writ of error may be brought by administrator de bonis non on such judgments, .....	653
in actions by and against administrator, how demands by and against the deceased may be set off, .....	670
may be prosecuted in actions for waste committed by deceased, whether actions are commenced before or after death of testator or intestate, .....	709
may tender sums due on mortgages, of which deceased owned right of redemption, and bring or prosecute suits for redemption, .....	715
shall acknowledge satisfaction, or give release, when an execution for possession on a mortgage has been levied, and subsequently paid, .....	715
liable to be summoned as trustees on account of debts, legacies, and effects, in their hands, .....	723
how in cases where deceased was summoned as trustee while living, .....	725, 726
to scire facias on judgment in trustee process, in certain cases, .....	726
(See Trustee Process.)	
With will annexed, when to be appointed, 482, 488 bond in such cases, .....	482
De bonis non, liable to actions for two years, .....	492
to give notice of appointment, .....	492
if he fails to give notice, not to have benefit of limitations, .....	492
to be further liable, if new assets are received, .....	492
Special, when may be appointed, .....	484
to act, though decree of appointment is appealed from, .....	484
to give bond, and condition thereof, .....	494
powers and duties of, .....	484
compensation of, .....	484
allowance to widow, &c., from funds in hands of, .....	484
appeal not to prevent payment of such allowance, .....	484
may pay funeral expenses, &c., by leave of court, .....	484
to cease to act, &c., on appointment of executor, &c., .....	484
not liable to creditors, &c., .....	484
Death, removal, &c., of, .....	508
upon death of, administration de bonis non to be granted, .....	503
may be removed by probate court for cause, and if sole, new one appointed, .....	503, 504
acts of, before removal, to be valid, .....	504
marriage of administratrix extinguishes her authority to act, .....	504
and, if there is no other administrator, &c., court to appoint, .....	504
may resign by leave of court, .....	504
Accounts, discharges, compromises, and releases, .....	504
accounts of two or more joint, may be allowed upon oath of one of them, .....	504
final discharge of, and evidence thereof, how perpetuated, &c., .....	504
to deposit money due, if not claimed for six months after decree, .....	504

**ADMINISTRATORS — continued.**

- such money to be paid over afterwards, when court orders, ..... 504
- may compromise claims, by leave of court, .... 504
- may execute certain releases of real and personal estate, by leave of court, ..... 504, 505

**ADOPTION.**

- of children, ..... 547, 548

**ADULTERATION.**

- fraudulent, for purposes of sale, of bread, or any substance intended for food, ..... 822, 823
- of any liquor used or intended for drink, .. 822, 823
- knowingly selling such adulterated liquor, .... 823
- of drugs and medicines, ..... 823
- knowingly selling such drugs, ..... 823
- adulterated articles to be forfeited, ..... 822, 823

**ADULTERY.**

- cause for divorce, ..... 582
- how punished, ..... 817
- when between married woman and unmarried man, the man deemed guilty of, ..... 817

**ADVANCEMENTS.**

- to heirs, &c., to be taken, in division, &c., of estates, as part of share, ..... 474, 475
- ot to be refunded, though it exceed share, ..... 475
- how to be considered, in division of estate, ..... 475
- how to be proved, ..... 475
- to issue not to be computed, in distribution to widow, ..... 485
- value of, how ascertained, ..... 475
- If descendant dies before intestate, leaving issue, to be considered in division, ..... 475
- not to affect title of tenants in dower or by the curtesy, ..... 475
- questions arising on proceedings for partition of real estate may be determined by court in which case is pending, ..... 705
- or case may be continued until the questions are determined by probate court, ..... 705

**ADVERTISEMENTS.**

- party may select paper for certain, ..... 577, 582

**AFFIDAVIT.**

- making a denial concerning a time, sum, quantity, or place alleged, to state what time, sum, quantity, or place is admitted or denied, ..... 556
- of merits to be made by defendants, in civil actions, within ten days of return of writ, or before end of return term, ..... 559
- time may be extended by order of court, ..... 559
- when to be made by absent defendants who come in on notice, ..... 546
- of interrogating party, or his attorney, to be annexed to interrogatories filed in civil actions, ..... 559
- required of corporations in suits, may be made by some officer thereof, ..... 568
- to truth of facts to be made by petitioner for leave to appear and dispute validity of prior attachments, ..... 581
- of witnesses out of state, when not taken according to the statute, may be admitted, or rejected at discretion of court, ..... 575
- not to be admitted in such case, unless adverse party had notice, if possible to be given, 575
- when not to be received on trials under acts respecting fugitives from service, ..... 736, 737
- of entry for breach of condition of mortgage, and to foreclose same, ..... 712
- of intention to foreclose mortgages of personal property, ..... 737

**AFFIDAVIT — continued.**

- of sales under mortgages, with powers of sale, ..... 716
- of notice of appointment to be made by executors and administrators, ..... 491
- of notice of sales of real estate by executors, administrators, and guardians, ..... 511
- of notice of sale of real estate for taxes by collector, ..... 54

**AFFIRMATION.**

- may be made, instead of taking oath, by Quakers and others having conscientious scruples, ..... 30, 673
- included in "oath" where by law it may be substituted therefor, ..... 51
- may be made by jurors, ..... 541

**AFFRAYERS.**

- before a court may be ordered without process to recognize to keep the peace, ..... 828, 829
- may be committed if they fail to recognize, .... 828, 829
- arrested without warrant by order of justice of the peace, ..... 918

**AFRICAN METHODIST EPISCOPAL CHURCH**

- trustees of society of, may organize and become corporation, ..... 204, 205
- powers of, ..... 205
- limitation of annual income of such corporation, ... 205
- organization of corporation, ..... 205
- copy of record of, to be left with town clerk, ... 205

**AGED, infirm, &c., persons, exempted from taxation, ..... 75****AGENTS.**

- of foreign insurance companies, to give bond, &c., ..... 331
- for sale of spirituous and intoxicating liquors, ... 440, 441
- of absent defendants, when writs may be served on, ..... 523
- to be appointed for absent heirs or devisees, in proceedings for partition of real estate by probate courts, ..... 708
- embezzlement by, how punished, ..... 800

**AGENTS AND FACTORS. (See Factors.) ..... 294****AGREEMENT.**

- by parties, or their attorneys, in civil actions, may be made respecting amendments, enlarging time, filing papers, &c., ..... 590
- by attorneys concerning suits and proceedings not valid, unless in writing, ..... 590
- for continuing a case, may be made by parties, but its place on docket may be regulated by general or special order of court, ..... 590
- of parties respecting amendments and filing papers equivalent to order of court, ..... 590
- such agreements not to postpone trial, ..... 591
- certain, not valid, unless in writing, ..... 597

**AGRICULTURAL AND HORTICULTURAL SOCIETIES.****AGRICULTURAL SOCIETIES.**

- property of, exempted from taxation, ..... 71
- when entitled to receive money from state treasury, ..... 576
- claiming bounty to file certificate with secretary of board of agriculture, ..... 576
- amount of bounty to be paid, to be ascertained by certificate last filed, ..... 576
- terms on which they are to receive money, ..... 576, 577
- returns by, to secretary of board of agriculture, how and when to be made to entitle to state bounty, ..... 577
- contents of such returns, ..... 577
- passages in returns, worthy of public notice, to be marked, ..... 577



**AGRICULTURAL, &c., SOCIETIES — continued.**

bounty forfeited by neglect to comply with provisions of law,.....	377
receiving bounty to offer premiums for agricultural experiments,.....	377
to offer encouragement, &c., for raising trees for ship timber,.....	377
surplus money of, to be put at interest,.....	377
foregoing provisions not to apply to societies incorporated for territory less than a county, except by special enactment,.....	377
may fix bounds for pens, yards, &c., within which spectators, &c., shall not enter under a penalty,.....	377
such bounds not to include, highways, &c., nor private estates without the owner's consent,.....	377, 398
may appoint marshals, with power of constables,.....	378
term of marshals' office,.....	378
premium for field crop not to be awarded without sworn evidence of weight,.....	378
Annual exhibitions, times of holding,.....	378

**AGRICULTURAL, HORTICULTURAL, AND ORNAMENTAL TREE ASSOCIATIONS.**

ten or more persons may become a corporation for the purpose of encouraging agriculture, horticulture, &c.,.....	378
may hold real and personal estate, to a limited amount,.....	378
how organized, and powers and privileges of,.....	378

**FARMERS' CLUBS.**

properly organized and holding regular meetings, upon application to secretary of state board of agriculture, to receive copies of report of board, &c.,.....	378, 379
receiving such benefits, to make returns annually in October to said secretary,.....	379

**AGRICULTURE, BOARD OF.**

how constituted,.....	141
tenure of office of members,.....	141, 142
vacancies, how filled,.....	141, 142
to meet at state house at least once each year,.....	142
to investigate subjects relating to agriculture,.....	142
to take donations, &c., for promoting interests of husbandry, &c.,.....	142
may prescribe forms for and regulate returns by agricultural societies,.....	142
compensation allowed only for expenses,.....	142
Secretary of, how appointed,.....	142
salary of,.....	142
clerk of, and salary,.....	142
to publish annual abstracts of returns of agricultural societies,.....	142
may appoint agents to visit towns, &c.,.....	142
such agents to report to secretary,.....	142
Annual report of,.....	142
when to be laid before legislature,.....	52, 142
when may be put in type,.....	53
number to be printed, and distribution of,.....	53

**AIR.**

casement of, not to be acquired by use,.....	472
--	-----

**ALARMS OF FIRE.**

penalty for giving falsely,.....	516
for stealing property removed because of,.....	797

**ALDERMEN.**

general provisions respecting,.....	166, 167
duty of in suppressing riots,.....	515
exempt from liability to watch, &c.,.....	174

(See Mayor and Aldermen.)

**ALF.**

to be considered intoxicating liquor,.....	442
--	-----

**ALEWIVES.**

regulations respecting,.....	268, 264
------------------------------	----------

**ALIEN PASSENGERS.**

board of commissioners of, and of state paupers, how constituted,.....	396
commissioner appointed by governor, to hold office for three years,.....	396
Commissioners may appoint person to visit state almshouses and report,.....	396
to appoint agents to procure information respecting, arriving in this state,.....	397
officers of railroads, &c., to furnish agents certain information concerning, under penalty,.....	397
to give direction concerning pauper returns,.....	397
to prescribe forms of returns for superintendents of state almshouses,.....	397
to prescribe and furnish forms of certificates to towns, for sending paupers to state almshouses,.....	397
to have powers of overseers of poor in relation to state paupers in hospitals,.....	397
may transfer inmates of state almshouses, &c.,.....	397
may commute bonds taken by superintendents of alien passengers,.....	397
may require pauper accounts to be substantiated by affidavits, &c.,.....	408
to make annual report to governor and council,.....	397
may allow towns to send sick paupers to hospital at Rainsford Island,.....	400
may complain in bastardy cases, when woman refuses, &c.,.....	404
compensation of, and of their agents,.....	397
Superintendents of, how appointed, qualified, and paid,.....	398
duties of,.....	398
when to be performed by overseers of poor,.....	400
to account quarterly with state treasurer,.....	399, 400
certain passengers not to be landed until bond is given to,.....	398
may permit sick, &c., passengers to land without bond,.....	399
may receive head money in lieu of bond,.....	399
such money to be refunded in certain cases,.....	399
may take bond for payment of such money,.....	399
such bond, how cancelled,.....	399
penalty on master, &c., for refusing to give bond, when landing sick passenger, if passenger becomes a charge upon town, &c.,.....	399
party to whom head money is repaid, &c., liable if passenger returns,.....	399
provisions not to apply to seamen sent from foreign places by U. S. consuls,.....	399
nor to foreign consuls, &c., nor persons from wrecked vessels,.....	399
penalty on master, &c., of vessel for landing, except at port of destination, with intent to avoid these provisions,.....	399
for landing, contrary to these provisions,.....	399
for landing convicts from other states,.....	399
persons bringing foreigners into the state, liable for their support, in certain cases,.....	400
arriving sick, to remain at Rainsford Island Hospital,.....	400

**ALIENATION** of real estate. (See Deed.)

**ALLEGATIONS. (See Pleadings.)****ALIENS.**

- may take, hold, transmit, &c., real estate,..... 478
- titles to real estate derived from, confirmed,..... 478
- when may be admitted as attorneys at law,..... 616
- how naturalized by supreme and superior courts,.... 618
- not to be naturalized by other courts, ..... 618
- actions by, within what time may be brought in certain cases, ..... 778

**ALIMONY.**

- may be decreed to wife, in certain cases, ..... 585, 586
- during pendency of libel for divorce, ..... 588
- decrees concerning, may be enforced, revised, and altered by the court,..... 586
- or share of estate in the nature of, to husband in certain cases, . . . . . 586

**ALLEGIANCE.**

- oath of, ..... 29, 33

**ALLOWANCE.**

- to widow and children of deceased persons, .... 484, 490
- when to be paid, notwithstanding appeal, on giving bond, ..... 484
- to wife during pendency of libel for divorce, ..... 588
- to insolvent debtors out of their estate, ..... 594, 597
- to prosecutors after conviction of burglary, larceny, &c., . . . . . 790
- when offender has forfeited his recognizance, ..... 790

**ALMSHOUSES AND WORKHOUSES.**

- may be provided by cities and towns, ..... 170, 171
- persons who may be maintained there, ..... 170, 171
- not to be erected by towns in other places without consent of such places, . . . . . 171
- Directors of, may be chosen, ..... 171
- when not chosen, overseers of poor to act, .... 171
- may appoint masters and assistants to superintend, ..... 171
- meetings of, to be held monthly, ..... 171
- may make rules for government, subject to approval of town, &c., ..... 171
- register of inmates, &c., to be kept by master, . . 172
- to be submitted to overseers of poor upon their request, ..... 172
- controversies between masters and overseers of poor to be determined by directors, ..... 172
- profits and earnings, how to be disposed of, .... 172
- Persons committed to, how may be discharged, ..... 172
- to be kept employed, .. . . . 172
- If idle, stubborn, &c., may be punished, ..... 172
- persons not having settlement in state may be committed to, &c., ..... 172
- Inmates with infectious diseases may be removed to hospitals, &c., by board of health, .. . . . 191
- masters, &c., to give notice to overseers of poor of death of inmates, ..... 196
- May be discontinued, ..... 178
- Powers, &c., granted to places by special acts, not affected, ..... 178

**JOINT BY SEVERAL TOWNS.**

- how may be provided, ..... 171
- Directors of, to be joint board, chosen by the several places, ..... 171
- each place to choose three, unless, &c., ..... 171
- vacancies, how filled, ..... 171
- If place neglects to choose, those of other places to have charge, ..... 171
- meetings of, to be held quarterly, ..... 171
- may be called at other times by directors of either place interested, ..... 171

**ALMSHOUSES, &c. — continued.**

- may choose moderator and clerk, ..... 171
  - clerk of, to be sworn, and record votes, &c., .... 171
  - may make by-laws, &c., if one half are present, 171
  - may appoint master, &c., and fix compensation, ..... 171
  - may act on other matters if one third are present, subject, &c., ..... 171
  - expenses, compensation, and repairs, how to be paid, by places interested, ..... 172
  - remedy against places neglecting to pay proportion, ..... 172
  - places not to send more than their proportion of persons, ..... 172
  - places refusing to pay proportion of expenses, deprived of right to send, ..... 172
  - each place may furnish means of work, for committee, by its authority, ..... 172
  - duties of master, when materials thus furnished, .... 172
- ALMSHOUSES, STATE.**
- Inspectors of, appointment, duty, and salary of, ..... 400, 401
  - to audit superintendents' accounts, and make reports, ..... 400
  - to have powers of overseers of poor, &c., . . . 401, 402
  - may send inmates becoming insane to state lunatic hospitals, ..... 401
  - to make certain inventories annually, ..... 40
  - Superintendents of, appointment, salary and bond of, ..... 402
  - to make returns, &c., concerning births, &c., ..... 169, 170
  - to receive paupers sent to them with proper certificate, &c., ..... 402
  - may contract for employment of inmates of, ... 402
  - accounts of, to be audited by inspectors, .... 402
  - to notify towns when paupers can be received, ..... 402
  - may complain in bastardy case when woman refuses to make complaint, ..... 404
  - towns, &c., may send state paupers to, .... 401
  - not to send lunatics to, who are dangerously mad, ..... 401
  - Idiots, having no known settlement, may be sent to, ..... 401
  - fee of officers, &c., in such cases, ..... 401
  - discharged convicts to be removed to in certain cases, ..... 401, 402

**AMENDMENT — continued.**

parties to sustain their case for cause intended, .....	658
when deemed for same cause of action and effect of adjudication thereof, .....	662
of writs sued out against defendant by fictitious name, .....	622
introducing new defendant when answer in abatement is filed, may be made before issue joined, .....	657, 658
when made in consequence of plea in abatement defendant to answer or plead to merits, ..	655
after demurrer filed, .....	656
in actions concerning lands in different counties, so as to include whole tract in one action, .....	620, 621
after judgment, to correct defects and imperfections of form in record, how made, .....	658
orders allowing, may before trial be made by court, or justice in term time or vacation in any county, .....	660
may be made by consent of parties, or by their attorneys in writing, .....	660
rules prescribing terms on which they may be allowed, to be made by courts, .....	660
court may impose costs as condition of, .....	782
of pleadings in petitions to enforce liens, .....	769, 769
Of constitution, how made, .....	8, 88

**ANATOMICAL SCIENCE.**

provisions for advancement of, .....	196
--------------------------------------	-----

**ANATOMY.**

when professors of to have body of person executed for dissection, .....	791
--	-----

**ANCIENT AND HONORABLE ARTILLERY COMPANY.**

members of exempt from serving as jurors, .....	680
---	-----

**ANIMALS. (See Beasts.)**

cruelly beating and torturing, how punished, .....	822
live, if attached, how may be disposed of, .....	628, 629
noxious, towns may raise money for destruction of, .....	158
unlawfully taking and driving, &c., .....	801

**ANNUAL MEETING.**

when to be held for town business, .....	159
for state elections, .....	36
when applied to towns, how construed, .....	51

**ANNUITY.**

given by will, when payable, .....	498
from what time to commence, &c., .....	498
apportionment of, in certain cases, .....	498
suits for, not to be brought against executor within one year after giving bond, .....	498
action for, against executors, &c., not limited, .....	498

**ANSWER.**

In equity cases, defence may be made by, .....	569
to be supported by oath unless waived, .....	569
In abatement, may be made in real, personal, or mixed actions, .....	655
not to defeat action if defect can be, and is, amended on leave, .....	658
that others should be joined as defendants, plaintiff may amend by joining other defendants, .....	657
when overruled on demurrer, or an amendment is made in consequence, defendant to plead or answer to merits, .....	655, 656
may be amended, or defendant allowed to answer over, for good cause shown, and not otherwise, .....	658
To merits of action, by defendant, may contain demurrer to raise issue in law in certain cases, .....	655

**ANSWER — continued.**

attorney to certify probable grounds, &c., in such case, .....	656
substituted in all but real and mixed actions, for special pleas in bar and general issues, which are abolished, .....	656
may be made jointly by two or more defendants making same defence, .....	656
may contain different consistent defences, separately stated, .....	656
to deny clearly, &c., or declare defendant's ignorance of every substantive fact, .....	656
to the common counts, and count annexed, every item to be answered specifically, ..	656
to state grounds of denial, and specify whether all or part, and what part of any sum, &c., in certain cases, is denied, .....	656
making denial concerning time, sum, quantity, or place, to state what time, sum, &c., is denied and what admitted, .....	656
may allege facts or title alternately, &c., .....	657
to set out clearly each substantive fact intended to be relied on in avoidance of plaintiff's action, .....	656
setting up statute of limitation or of frauds, or other legal bar, need not deny facts set out in plaintiff's declaration, .....	656
to set out copies, or effect, of written instruments relied on, .....	656
need not state evidence, or disclose means of proof, .....	657
to set forth breaches of bonds and conditional obligations, and aver performance of conditions precedent, .....	656
may allege facts occurring after commencement of suit, .....	657
justifying in action for slander and libel, not proof of malice, .....	662
to one matter, not evidence in another in same answer, .....	662
required of corporations, by whom to be made, .....	663
when made to merits, defects in writ or process not to affect jurisdiction of court, .....	662
when required to be made by absent defendants, .....	646
may be amended, .....	658
when to be made by absent defendants who come in under notice, .....	646
how made by respondent in complaints for flowing land, .....	755
supplemental may be allowed by court, .....	657
order allowing may be made by judge, in or out of court, in any county, .....	680
in set-off, when and how may be made, ....	670, 671
in case of tender, how made, .....	671
forms of, .....	667-669
After answer, no further pleadings required, except by order of court, .....	656
but plaintiff may demur to answer or reply if he pleases, .....	656
new matter introduced by answer, deemed denied by plaintiff, or court may require him to reply, .....	656
trial not to be delayed for want of reply, except by order of court, .....	661
(See Pleading.)	
To interrogatories, filed by parties in civil suits, .....	659
(See Interrogatories.)	
By trustee, in trustee process, .....	722, 729
(See Trustee Process.)	

**APOTHECARY.**

- penalty for selling deadly poisons and not making  
record of sale, unless by physician's pre-  
scription,..... 823  
when may sell intoxicating liquors,..... 442

**APPEAL.**

- In equity cases in supreme court, from single  
judge to full court, . . . . . 560  
may be had from any final decree of single judge  
if claimed within thirty days,..... 560  
how claimed, entered, heard, and deter-  
mined, . . . . . 560, 561  
omitted, by accident, &c., to be claimed in  
time, may, on petition to court within a  
year, be allowed on terms,..... 560  
after an appeal is taken, single judge may make  
certain orders for appointment of receivers,  
&c., . . . . . 560  
from interlocutory decree of a single judge,  
may be had to full court,..... 560  
such appeal not to transfer the case but only the  
the question, nor suspend execution of  
decree, . . . . . 560  
from final decree, court may revise interlocutory  
decrees not appealed from, . . . . . 560  
to be heard on the evidence taken before single  
judge, and provisions for taking such evi-  
dence, . . . . . 561  
but court may in certain cases allow further evi-  
dence to be taken,..... 561  
From superior court to supreme court, . . . . . 563  
may be had in all cases, civil or criminal, upon  
judgment founded upon law apparent  
on record, except upon answers and pleas  
in abatement, and certain motions to dis-  
miss, . . . . . 563  
on decisions upon demurrer in certain cases,.... 561  
by third parties in certain cases, on adjudication  
that an amendment is for same cause of  
action, . . . . . 563, 563  
question only to be entered in supreme court, . 567  
execution not to issue on judgment appealed  
from except in certain cases,..... 563  
to be heard by full court,..... 563  
issue of law joined before, not to be waived after  
entry in supreme court, &c.,..... 563  
but pleadings may be withdrawn or amended on  
leave and case remanded,..... 563  
security, &c., not discharged when appeal is en-  
tered in supreme court until after final  
judgment, . . . . . 563  
copies of papers in, how prepared, transmitted,  
and paid for, . . . . . 563, 567  
such copies to be transmitted within twenty days  
after adjournment of court for the term,  
and entered on law docket of supreme  
court, . . . . . 567  
to be entered at next term of supreme court,  
in counties where law terms are estab-  
lished, . . . . . 564  
or by consent of parties in court for com-  
monwealth,..... 567  
in other counties, to be entered in court for com-  
monwealth,..... 567  
in criminal cases, to be entered on separate  
docket,..... 567  
if not entered by appellant, adverse party may  
on complaint have judgment, &c.,  
affirmed, . . . . . 554, 555  
if by mistake, &c., appeal or complaint is not  
duly entered, how may, on leave, be en-  
tered afterwards,..... 555

**APPEAL—continued.**

- such entry on leave not to revive any security  
discharged, . . . . . 555  
court may affirm former judgment with addi-  
tional damages, reverse the same, or make  
other order, &c.,..... 554  
in proceedings for partition of real estate, upon  
matter of law, &c.,..... 701  
in complaints for flowage, as in other cases,.... 766  
in proceedings to enforce liens,..... 768  
in libels for forfeited goods,..... 773  
in cases of audita querela,..... 773  
From probate courts to supreme court,  
415, 423, 548, 615, 576  
may be taken by any person aggrieved by de-  
cree, &c., of probate court,..... 575  
to be claimed and notice given at probate office  
within thirty days,..... 575  
to be entered at rule day of supreme court next  
after fifty days,..... 575  
appellant to file in probate office reasons for ap-  
peal, and serve copy on adverse party  
within fourteen days before time of  
entry,..... 575  
omitted, how may be entered on petition and  
leave granted, . . . . . 575  
petition for entry in such case must be filed  
within one year, and adverse party notifi-  
ed,..... 575  
unless petitioner was out of the country, in  
which case he may file his petition within  
three years after his return,..... 575  
to be entered on docket with cases in equity, as  
also petitions for appeal,..... 540, 575  
after being taken, proceedings upon decree, &c.,  
to cease until determination or waiver  
thereof, . . . . . 575  
except in case of certain allowances to  
widow and children, when bond is  
given,..... 574  
may be waived before entry, . . . . . 575  
may be affirmed or reversed in whole or in  
part, or other order made and case re-  
mitted,..... 575, 576  
if not entered, may be affirmed upon complaint

F

F

**APPEAL—continued.**

jurisdiction of, by superior court,.....	562
from police courts to be same as from justices of the peace,.....	572
<i>In civil cases,</i> .....	607
may be had to next term of superior court, by any party aggrieved by judgment of justice, except upon verdict of jury,.....	607
by third parties in certain cases upon adjudication that an amendment is for same cause of action,.....	662, 668
to be claimed within twenty-four hours,.....	607
when taken, no execution to be issued by justice, but case to be determined in court appealed to, as if it had been commenced there,.....	607
appellant to recognise to prosecute his appeal, &c.,.....	607
if defendant in process of forcible entry and detainer appeals, he must recognise to pay rent, &c.,.....	708
appellant to produce to court appealed to copy of record, papers, &c.,.....	607
to be tried in superior court, on issue joined before justice, unless court orders defendant to plead,.....	607
if not entered, or copies, &c., are not produced, former judgment may, on complaint of adverse party, be affirmed, &c.,.....	607
when appeal, or complaint for not entering an appeal, is by mistake, &c., not duly entered, how may be entered afterwards on leave,.....	568
such entry on leave not to revive security discharged,.....	568
to be tried at civil terms in counties where there are separate terms of superior court for civil and criminal business,.....	564
costs to be only quarter sum of debt if plaintiff appeals and does not recover more than twenty dollars,.....	781
in proceedings to enforce liens,.....	768, 770
<i>In criminal cases,</i> .....	572, 609, 610, 828
from magistrates, requiring sureties of the peace,.....	828, 829
from conviction before justices of the peace or police courts,.....	848
appellant to be committed until he recognises,.....	848
condition of recognizance,.....	848
witnesses to be recognized,.....	848
duty of justice, &c., as to the papers in the case,.....	848
to make and transmit copies, and the recognizance,.....	848
fees therefor to be paid from county treasury,.....	848
appellant not to advance fees on claiming or prosecuting his appeal,.....	848
on sentence may be made to pay all or part,....	848
if appellant fails to enter and prosecute appeal, he may be defaulted on his recognizance,.....	848
sentence may be awarded, as on conviction,....	848
may be brought in by process, to receive sentence,.....	848
in suits on forfeited recognizances, if penalty is forfeited, or paid without a suit, forfeiture may be paid to proper person by order of court.....	848

**APPEAL—continued.**

From commissioners on insolvent estates of deceased persons,.....	497, 498, 562
may be had to supreme or superior court according to amount in controversy,.....	497, 498
how claimed, entered, and proceeded with,.....	497, 498
may be waived before entry, and claim submitted to arbitration,.....	498
From magistrates rendering judgment on charges of fraud alleged against poor debtors,.....	638, 639
may be had to superior court by debtor or creditor, in like manner as from a justice in civil cases,.....	638, 639
appellant to recognise,.....	639
trial to be had by jury, unless the court determines it by consent of parties without jury,.....	639
<b>Miscellaneous.</b>	
from order of board of health to supreme court relative to offensive trades,.....	194
closing tombs, &c.,.....	196
from commissioners of wrecks, to superior court, concerning compensation, &c.,.....	428
from judges and commissioners, on order to commit to reform and industrial schools,.....	415, 422
from taxation of costs, how to be heard and determined,.....	782
when appellee may have costs before appeal is settled,.....	782
costs of appeal from taxation of costs,....	782, 783
in cases of seizing, &c., forfeited goods,....	778, 774
in proceedings for improvement of low lands, &c.,.....	752, 753

**APPEARANCE.**

of defendant, in civil actions, to make affidavit,.....	668, 669
of absent defendant, when required after notice,.....	646
of trustees in trustee process, when and how to be made,.....	722, 729

**APPLICATIONS TO LEGISLATURE.**

notice of, when to be given, &c.,.....	47, 48
--	--------

**APPORTIONMENT OF SENATORS AND REPRESENTATIVES,.....**

	62-64
--	-------

**APPRAISERS.**

not disqualified on account of being inhabitant of town, &c., interested,.....	618
of goods seized, and labelled, or forfeited,.....	774
of damages in case of cattle impounded,.....	186
of stray beasts, and lost goods, how appointed and sworn,.....	425
of estates of persons deceased, appointment and duty of,.....	488, 489
to be sworn,.....	489
form of justice's order to,.....	489
of trust property,.....	501
of estates of wards,.....	546
when officer sells perishable property, &c., attached,.....	629
when property is attached on suit against part owner,.....	690
of estate of homestead, to be set off to insolvent debtor, or in case of levy of execution,.....	526
of estates taken on execution,.....	517
fees of,.....	786, 787

**APPRENTICES.**

settlement of, how acquired,.....	391
to be bound by indentures of two parts, &c.,.....	549, 550

APPRENTICES — *continued.*

binding of, by whom, and for what time,.....	549
cannot be bound by mother or her husband upon subsequent marriage,.....	549
not bound, after master's death,.....	551
consent of, to be expressed in indentures, if above the age of fourteen years when bound by parent or guardian,.....	549
may be bound to mistresses as well as masters,.....	551
indentures to be kept for use of,.....	550
minor children of poor parents, how bound by overseers of the poor,.....	549
how to be taught, &c.,.....	549
to have what is paid, &c., for their services, &c., by master,.....	550
to have what is recovered of master, for breach of indenture,.....	550
treatment of, to be inquired into by parents, &c.,.....	550
to be defended, and protected from cruelty, neglect, &c.,.....	550
complaint for misconduct, &c., of master or servant may be filed in superior court,.....	550
notice of, to be given to adverse party, &c.,.....	550
may be discharged from apprenticeship,.....	550, 551
when discharged may be bound out anew,.....	550, 551
costs in such case, how awarded and recovered,.....	550
master of, liable for breach of indenture,.....	550
actions against, by whom to be brought,.....	550
proceedings in,.....	550
limitation of,.....	551
may be apprehended, &c., if they abscond from master,.....	551
and returned to master, or committed to jail, &c.,.....	551
costs, how paid in such cases,.....	551
how bound by alien commissioners,.....	397
by inspectors of state almshouses,.....	401
inmates of industrial school, how bound,.....	415
of reform school, how bound,.....	419
certain inmates of jails, houses of correction, and workhouses, how bound,.....	369

APPROPRIATIONS. (*See Finance.*)..... 139, 141

## AQUEDUCTS.

penalty for injuring or corrupting water in,....	375, 378
water from, may be used for extinguishing fires,.....	375, 378
Proprietors of, how to become a body corporate,.....	374
may determine their corporate name,.....	374
organized under chapter forty of Revised Statutes, subject to provisions of chapter sixty-five,.....	374
may agree how to call future meetings, &c.,....	375
may choose a clerk, who shall be sworn, directors and other officers,.....	375
president of, to be one of the directors,.....	375
clerk of, to record by-laws, votes, &c.,.....	375
to record their names, and the shares of each,.....	375
the transfer of shares,.....	375
shares of to be personal property, and how transferable,.....	375
may be assessed, and sold to pay assessments,.....	375
sale of, how advertised, &c., in such case,....	375
surplus money arising from sale to be paid to owner, &c.,.....	375
may hold real estate to a limited amount,.....	375
may dig up streets, and with consent of may-	

AQUEDUCTS — *continued.*

or and aldermen or selectmen, to place or repair pipes, &c.,.....	375
upon dissolution of company, corporations to be tenants in common of real estate,.....	375
contracts of, to remain in force,.....	375
last shareholders, to be liable, &c., six years in corporate capacity for performance of contracts,.....	375
how far personally liable,.....	375
applications for damages sustained by operations of, to be made within three years, &c.,.....	375
damages recovered against, may be collected by warrant of distress, &c.,.....	375

## ARBITRATION AND AWARD.

Arbitration, by agreement, before a justice of the peace,.....	749
fees of justice for making out the agreement,....	750
subjects of a personal action at law, or of a suit in equity, may be submitted,.....	749
parties to, shall sign and acknowledge agreement of,.....	749
form of such agreement, and of justice's certificate,.....	749
the demand submitted, if specific, and to exclusion of others, shall be stated and annexed to agreement,.....	749
submission of all demands, what to include,....	749
not to be revoked, unless by agreement,.....	749
when arbitrators may determine <i>ex parte</i> ,.....	749
all the arbitrators shall meet; a majority may decide, unless restrained by the submission,.....	749
arbitrators may make award concerning costs, &c.,.....	750, 752
compensation of, subject to reduction by court,.....	750
time of making, &c., award may be agreed upon by parties,.....	749
parties to attend courts without notice, as if action were pending,.....	750
of claims allowed or disallowed by commissioners of insolvency on estates of deceased persons after an appeal claimed, how had,.....	698
of claims, by and against estates of insolvent debtors, may be had by assignee, under direction of the judge,.....	595
Award to be made and reported within time agreed on by parties,.....	749
after such time, inoperative, unless recommended by court,.....	749
to be delivered to court, or sent to clerk, under seal,.....	749, 750
may be returned at any term, &c., of court within the time limited in submission,....	750
subject to same disposition by court, as if made by referee, under rule, &c.,.....	750
judgment and execution on, as on award of referees under rule, &c.,.....	750
notice of, may be given by court, before acting thereon,.....	750
may be accepted, recommitted, or rejected by court,.....	750
fees in court the same as on awards made under rule, &c.,.....	750
no appeal from judgment, &c., on award, but writ of error may be brought,.....	750
of claims on appeal from decision of commissioners of insolvency on estates of deceased persons,.....	698

**ARBITRATION, &c. — continued.**

- of claims in favor of, or against, estates, by leave of probate courts,..... 494, 504
- of commissioners of wrecks, &c., for compensation,..... 428, 429
- of controversies respecting contracts made by warden of state prison,..... 878, 874

**ARBITRATORS.**

- witnesses in cases pending before, how summoned,..... 672
- may administer oaths to persons offered as witnesses before them,..... 678
- penalties for bribing, &c., and for acceptance of bribe by,..... 818
- fees of,..... 750

**ARMORIES.**

- provisions concerning,..... 104

**ARMS.**

- right of the people to keep and bear, for the common defence,..... 9, 16
- exempt from distress for taxes,..... 82
- attachment and levy for debt,..... 102, 688
- Firearms**, how to be proved,..... 280
- how to be stamped,..... 260, 261
- provers of, how appointed,..... 260
- to be sworn, and duties of,..... 280
- fees for proving,..... 261
- penalty for buying or selling not proved,..... 261
- not to extend to arms manufactured by United States, &c.,..... 261
- for forging or altering stamps,..... 261

**ARRAIGNMENT.**

- if prisoner refuses to plead or answer, or does not confess, court to order plea of not guilty to be entered,..... 840
- prisoner need not be asked how he will be tried,..... 840
- In capital cases, may be by single judge of supreme court,..... 558
- if prisoner pleads guilty, single judge may award a sentence,..... 558
- if he does not plead guilty, single judge to assign counsel, and take measures for trial before full court,..... 558, 564

**ARREST.**

- members of congress privileged from,..... 8
- representatives, how far privileged from,..... 22
- in prosecutions before courts martial,..... 117
- In civil cases, original writ for arrest of body, how framed,..... 621
- to be served by officer, as directed by plaintiff,..... 682
- officer not liable for not arresting defendant, unless specially directed,..... 684
- on mesne process and execution, when and how may be made,..... 688, 684
- of attorneys at law, in actions for money collected, how made,..... 688, 684
- not to be made of person performing military duty,..... 99
- not to be made of defendant in actions for slander or libel,..... 684
- not to be made after sunset, unless specially authorized by magistrate,..... 685
- women not to be arrested, except for tort,..... 684
- upon executions issued for costs only, may be made without affidavit, and proceedings thereon,..... 684
- may be made, as in other cases, on writs, to bring in new defendants,..... 658
- on writ taken out by sureties on administration bond against principal,..... 506
- sheriff, exempt from,..... 151

**ARREST — continued.**

- insolvent debtors discharged, how exempt, and discharged from,..... 591
- punishment for arresting a dead body,..... 821
- defendant when arrested, may give bail, 685, 687, 642
- persons arrested, when to be carried before magistrate, duty of officer, and proceedings thereon,..... 686
- (See *Poor Debtors*.)
- Of judgment*, not to be made for any cause existing before verdict,..... 662
- In criminal cases, officer arresting to state reason to person arrested,..... 789
- to exhibit precept, on request,..... 789
- penalty for false answers, or refusal to show precept,..... 789
- for arrest on pretended process,..... 790
- on warrant, not allowed, unless person specially designated, &c.,..... 15
- of persons indicted capitally, to be ordered forthwith by the court,..... 839
- against whom a warrant has issued, and who have left the county, how may be made,..... 881
- if charge is for capital or state prison offences, officer to carry person to county whence warrant issued,..... 882
- may be made without warrant in certain cases, 608, 814, 815, 816, 821, 828, 829
- process for, by whom may be issued,..... 881
- punishment of officers for wilfully refusing to arrest on lawful process,..... 818, 815
- person arrested, to be carried before magistrate,..... 831, 832
- proceedings in such cases,..... 882, 883
- proceedings where person under indictment is arrested after adjournment of court,..... 884

**ARSENIC.**

- persons selling without written prescription of a physician, to keep record of sale,..... 828
- penalty for neglect,..... 828
- penalty on purchasers giving false names,..... 828

**ARSON.**

- not a bailable offence,..... 886
- how punishable. (See *Burning*.)..... 796

**ARTICLES OF WAR.**

- provisions concerning,..... 94
- (See *Militia*.)

**ASHES.**

- provisions respecting pot and pear,..... 276, 277

**ASSAULT.**

- on a representative for official act, how punishable,..... 22
- on a witness summoned before the legislature,..... 22
- punishment of, with intent to murder,..... 798
- with intent to maim, &c.,..... 793, 794
- with intent to rob, &c.,..... 793, 794
- with intent to ravish,..... 793, 794
- with dangerous weapon, and intent to rob or murder,..... 793, 794
- with intent to commit burglary,..... 794
- jurisdiction of police courts and justices of peace in cases of,..... 570, 609

**ASSAULT AND BATTERY.**

- actions for damages for, to be brought in two years,..... 777
- jurisdiction of police courts and justices of peace in cases of,..... 570, 609
- prosecution for, may be stayed on reparation of injury and payment of costs,..... 884, 889

**ASSAULT, &c. — continued.**

- except assault is riotous, or on officer, or with intent to commit a felony,..... 834, 839
- civil actions for, barred by such reparation,.... 839, 840

**ASSAYERS.**

- of metals and ores, may be appointed by governor,..... 274

**ASSES.**

- to be impounded, if found going at large, contrary to law, &c.,..... 185
- penalty for unlawful driving,..... 801

**ASSEMBLY.**

- unlawful, riotous, and tumultuous, how suppressed,..... 815
- refusing aid to suppress,..... 815
- officers neglecting to suppress, how punished,..... 815
- may be dispersed by force,..... 815
- proceedings in calling out an armed force,..... 815, 816
- penalty for disturbance of any lawful,..... 820

**ASSESSORS.**

- three or more to be chosen, by ballot, by towns at annual meeting,..... 160, 161
- to be sworn,..... 161
- form of oaths,..... 79, 163, 201
- penalty on, for not taking oath of office,..... 163
- if towns neglect to choose, county commissioners may appoint,..... 161
- selectmen to act as, when others not specially chosen,..... 162
- to give notice to inhabitants to bring in lists of polls and property,..... 77
- such list to be under oath, and be received as true unless, &c.,..... 77
- to make fair cash valuation of all taxable property,..... 77
- to make estimate of value of property when list is not brought in,..... 78
- such estimate to be conclusive, and entered in valuation, unless, &c.,..... 78
- to add to tax of parents, &c., price of books furnished by school committee to children,..... 219
- duty of, when taxable person designates another place as his residence,..... 76
- in assessment of all taxes,..... 77
- penalty on, for neglect,..... 77
- neglecting to assess taxes, county commissioners to appoint persons to perform duty,..... 77
- masters of dwelling houses, &c., to give names of taxable persons to, under penalty,..... 77
- penalty on, for agreeing with parties to an assessment for limited amount, with view to a residence for taxation,..... 77, 78
- may include state, county, and town taxes, or any two of them, in one assessment,..... 78
- to assess upon polls one sixth part of sum to be raised, provided, &c.,..... 78
- may add five per cent. to tax for convenience of apportionment,..... 78
- to make list of valuation and assessment thereon, and deposit in office for public inspection,..... 78
- contents of such list,..... 78
- to swear to such list, under penalty,..... 79
- form of tax list for collectors,..... 79
- to commit list and warrant to collector, if no collector, to constable or sheriff,..... 79
- contents and form of warrant,..... 79
- to issue new warrant, if original is lost,..... 79
- may order taxes to be collected forthwith if credit is doubtful,..... 81

**ASSESSORS — continued.**

- to post up rates of discount allowed,..... 79
- may make abatement to party overtaxed, upon application,..... 79, 224
- if application is refused, party may complain to county commissioners,..... 79
- to furnish certificate of abatements made by them,..... 80
- to assess persons applying seven days before an election,..... 80
- to be responsible only for want of integrity in assessing town, parish, &c., taxes,..... 80
- may reassess all taxes except poll taxes, invalid by error, &c.,..... 80
- may order collection of taxes, although error in name of person taxed,..... 82
- to make list of persons liable to enrolment in militia, annually, in May or June, and deliver copy to town clerks,..... 91
- to take census in towns,..... 168
- to be sworn, and make return under oath,..... 168
- to deliver return to sheriff or transmit to secretary,..... 168
- penalties on, for neglect, &c.,..... 168
- duties of, in assessing taxes in watch districts,..... 175
- in fire districts,..... 181
- in school districts,..... 222, 224
- to ascertain, annually, number of children between five and fifteen years, and report to school committee,..... 225
- to assess highway taxes upon order of town, and deliver lists to surveyors,..... 245
- compensation of,..... 80, 224
- Assistant, may be chosen if towns deem expedient,..... 160
- to be sworn,..... 161, 163
- duties of,..... 163
- Of parishes, to be chosen at annual meeting, and sworn,..... 201
- form of oaths,..... 79, 163, 201
- to manage prudential affairs, and have power of selectmen to call meetings, &c.,..... 201
- what to insert in warrant for meeting,..... 201

**ASSETS.**

- Of estates of deceased persons, do not include goods ordered by judgment in replevin, to be returned by executor, &c.,..... 651
- nor goods and damages recovered by executor, &c., as a mere testator,..... 651
- may be ordered to be retained to pay debts not become due,..... 694
- received by executor, &c., after two years from administration taken, render him again liable to suits by creditors,..... 491, 492
- may be marshalled by courts, conformably to will of deceased, so far as consistent with rights of creditors,..... 479
- how distributed in case of intestates,..... 486
- when an estate is insolvent,..... 496-500
- Of insolvent debtors, how distributed,..... 504, 505, 507

**ASSIGNEES.**

- of insolvent debtors,..... 505, 507
- (See *Insolvency*.)

**ASSIGNMENT.**

- of the estate of insolvent debtors, and corporations,..... 506, 507
- (See *Insolvency*.)

**ASSISTANT CLERK.**

- of the supreme judicial court for the commonwealth,..... 612, 5



**ASSISTANT CLERK — continued.**

- of the courts in the counties of Middlesex and Worcester, ..... 612
- of supreme and superior court in Suffolk county, .... 612
- of police courts, ..... 569, 578
- (See *Clerks of the Courts, Police Courts.*)

**ASSUMPSIT.**

- action of contract substituted for, ..... 568

**ASSISTANT WATCHMEN.**

- at state prison, appointment and salary of, .... 870, 871

**ATTACHMENT.**

- writ of, how framed, issued, and served, ..... 621
  - to be served by attachment, if the plaintiff so directs, ..... 681
- may be made on original writs, ..... 624
- on writs issued to bring in new defendants, .... 668
- in suits in equity, by creditor's bill or writ of attachment, ..... 559
- upon bills for divorce, in certain cases, and how, ..... 536
- on writs of review sued out by original plaintiff, ..... 748
- on writ taken out by sureties on administration bond against principal, to make him co-defendant, ..... 506
- not to be made of real estate, on writs returnable before police courts or justices of the peace, unless damages demanded exceed twenty dollars, ..... 624
- when creditor not bound by adjudication that amendment in action in which prior attachment is made, ..... 668
- property held by, may be replevied, ..... 781

**WHAT PROPERTY LIABLE TO.**

- all property which may be taken on execution liable to, ..... 624
- property replevied from officer after an attachment, ..... 634
- liability of plaintiff in replevin and his sureties in such case if there is judgment for return, ..... 624
- goods replevied in other cases, when not to be made, ..... 625
- proceeds in hands of officer of property attached and sold, ..... 624
- goods attached by a former officer who has died or been removed, ..... 624, 625
- owner's interest in building on which mechanic's lien is sought to be enforced, ..... 764, 765
- how protected, in case of sale of building, .. 764, 765
- money in hands of officer after sale on another attachment or levy, ..... 689
- franchises of turnpikes, and other corporations, authorized to take toll, ..... 887

**HOW MADE, DURATION AND EFFECT OF.**

- several attachments may be made in any county on same writ by same or different officer, ..... 624
- not to be made on writ after summons is served, .... 624
- to continue in force, notwithstanding death of officer, ..... 625
- not to be held in original suit to satisfy judgment in review, ..... 748
- of land mortgaged, to continue although mortgage is paid before levy, ..... 625
- to continue in force thirty days after judgment for plaintiff, ..... 625
- sixty days, if judgment is recovered or the attachment is made in Nantucket, in certain cases, ..... 625

**ATTACHMENT — continued.**

- how long when levy on is suspended by reason of a prior attachment, ..... 600
- when, unless dissolved, sufficient cause for instituting proceedings in insolvency against debtor, ..... 596
- against corporations, ..... 599
- if, by accident, not dissolved within time allowed, proceedings may be stayed, ..... 596
- By trustee process, how made, ..... 721
- may be made of property in hands of trustee, after service on defendant; but writ must, in such case, be again served on defendant, ..... 721
- on new trustees inserted in writ, or on same trustee several times, ..... 721
- demand to be made within thirty days after judgment, ..... 724
- Exemption from, of certain homesteads, to extent of eight hundred dollars, . . . . . 524, 525
- of certain personal property, ..... 102, 687, 688
- property of a debtor discharged in insolvency, acquired by him after first publication of notice, ..... 591
- of wages of debtor and minor children in certain cases, ..... 724

**OF REAL AND LEASEHOLD ESTATES.**

- of real estate may be made without officer entering upon or being in view of land, ..... 626
- of leasehold estate, officer to state in general terms the leasehold estate, ..... 626
- not valid against subsequent purchaser, or attaching creditor, unless writ or copy, &c., are deposited in clerk's office, ..... 626
- officer to deposit writ or copy in such case with clerk, and receive fees therefor, ..... 626
- clerk to note time of receiving same, and make a record thereof, ..... 626
- clerk's fee for record to be taxed by plaintiff in his bill of cost, ..... 626
- if writ or copy is so deposited within three days, the attachment takes effect when made, otherwise when writ or copy is deposited, ..... 626
- of real estate fraudulently conveyed, or paid for directly or indirectly and retained by vendor, or conveyed to a third person, ... 626
- clerk to enter with record of officer's return, the name also of the person in whom such record title stands, ..... 626, 627
- of lands mortgaged to continue, although mortgage is paid before levy, ..... 625
- of lands held in common, to remain on part assigned to defendant on partition, ..... 702

**OF GOODS WHICH CANNOT BE REMOVED.**

- of personal estate, which by reason of bulk cannot be immediately removed, copy of writ to be deposited in the office of the city or town clerk, ..... 627
- clerk to receive and file copies, and make record thereof, and receive fee therefor, ..... 627
- officer making a subsequent attachment of same property to give notice to the officer who makes sale under first attachment, ..... 689

**OF SHARES IN CORPORATIONS.**

- may be made by leaving copy with some officer thereof, ..... 627

**ATTACHMENT — continued.**

- such attachment to hold shares, and all subsequent dividends,..... 627
- officer having writ against a stockholder may have a certificate from recording officer of corporation of number of shares held by such stockholder,..... 627
- officer making a subsequent attachment of same property to give notice to the officer who makes sale under first attachment,..... 629
- OF PERSONAL PROPERTY MORTGAGED OR PLEDGED.**
- of property mortgaged, pledged, or subject to any lien, how made,..... 627
- attaching creditor in such case to pay mortgage, or other claim, within ten days after same is demanded,..... 627
- claimant of property in making demand shall state in writing exact amount due, and if it is not paid in ten days, attachment to be dissolved,..... 627
- if he demands and receives more than is due, creditor may recover excess with twelve per cent. interest,..... 628
- when such property so attached is redeemed by creditor, and sold on mesne process or execution, proceeds to be first applied to pay amount paid by creditor on mortgage or other claim,..... 628
- plaintiff, after having so redeemed property, if he does not recover judgment, may still hold the property until debtor repays him,..... 628
- property subject to mortgage, and in possession of mortgagor, may be attached, and mortgagee summoned as trustee to answer interrogatories,..... 628
- if mortgage is proved to be bona fide, court may order attaching creditor to pay amount due to the mortgagee,..... 628
- if attaching creditor denies validity of mortgage, an issue may be framed and tried by jury,..... 628
- when creditor has paid amount as ordered by court, he may retain amount thereof out of proceeds of property sold,..... 628
- if in such case plaintiff does not recover judgment, he may hold the property until debtor has repaid sum so paid by him,..... 628
- SALE OF PERSONAL PROPERTY ATTACHED.**
- by consent of debtor and all attaching creditors, personal property attached may be sold by officer,..... 628
- sale to be conducted in like manner as sales on execution,..... 624, 688, 689
- proceeds in such case to be held by officer, and liable to further attachment,..... 624
- balance of, above attachments, to be paid to defendant,..... 624
- live animals and perishable property attached may be sold by request of either party,..... 628, 629
- on such request officer to give notice to parties or their attorneys, and prepare schedule,.... 629
- notice, how given to defendant,..... 629
- three appraisers to be appointed, and sworn by officer or a justice of the peace,..... 629
- appraisers, how and by whom to be appointed,.... 629
- to examine the property and appraise it, if they find it cannot be kept without waste or great expense,..... 629

**ATTACHMENT — continued.**

- officer thereupon to sell, and hold proceeds as if sold by consent, unless defendant deposits appraised value,..... 629
- proceeds liable to further attachments,..... 629
- balance of above attachments to be paid to defendant,..... 629
- defendant may take property on depositing appraised value with officer, or giving him a bond to pay the amount, or satisfy judgment within certain time,..... 629
- bond in such case to be returned with writ, and suits thereon how brought,..... 629
- writ in suit on, to be indorsed by all creditors who join therein,..... 629
- judgment on, how awarded, and executions, how issued,..... 629
- money recovered on such bond to be appropriated to pay expenses of writ thereon, and residue to attaching creditors,..... 629
- rights of attaching creditors may be determined by court in equity, and joint or separate executions awarded,..... 629, 630
- in rendering judgment or issuing execution in such case, sufficient to be reserved for prior attaching creditors, although they did not sue,..... 630
- creditor not joining in suit on such bond, may, on motion, become a party to the suit,..... 630
- or may have scire facias to recover what may be due him,..... 630
- action on such bond, and such writ of scire facias, limited to one year,..... 630

**OF JOINT PERSONAL PROPERTY, ATTACHED ON WRIT AGAINST PART OWNER.**

- owner of part not attached may have property appraised,..... 630
- property after appraisal to be delivered to such owner upon his giving bond to restore same, &c.,..... 630
- share of defendant in such property to become pledged to other owner who pays appraised value,..... 630
- may be sold by such owner if not redeemed,.... 630
- if attachment is dissolved, property to be restored to defendant or officer,..... 630
- bond to be returned by officer, and how suits may be brought thereon,..... 630

**How DISSOLVED.**

- by defendant giving bond to pay amount of judgment recovered,..... 630
- bond in such case to be approved by plaintiff or a master in chancery,..... 630
- proceedings in such case before master, and fees therefor,..... 630
- by defendant's death, if administration is taken out within a year,..... 630
- in such case officer to deliver goods attached to executor or administrator on demand, on being paid fees,..... 630
- if officer has sold the goods, he is liable only for proceeds,..... 630
- if officer has paid proceeds to creditor, executor or administrator may recover same of creditor,..... 630, 631
- in actions by executors or administrators in either of said cases, officer or defendant not to set off claims against deceased,..... 630
- by final judgment for defendant,..... 630

**ATTACHMENT—continued.**

by omission to enter appeal on exceptions, not revived by subsequent entry on petition, .....	555, 563
by assignment of debtor's estate by proceedings in insolvency, .....	586
how attachment may be made to survive in such case for benefit of creditors, .....	586, 587
not to be, by bringing in new defendant in action, .....	658
not by appeal or exceptions taken until final judgment thereon, .....	563
<b>DISPUTED BY PERSONS HAVING SUBSEQUENT LIENS.</b>	
validity and effect of, may be disputed by persons having subsequent liens, on the ground that demand in first suit was not due or payable, .....	631
petition to be filed in court by persons disputing attachment, .....	631
to be made on oath of petitioner, or some person in his behalf, .....	631
petitioner to give bond, or recognize to pay damages and costs, .....	631
trial by jury may be had thereon, .....	631
attachment may be dissolved in whole or in part, .....	631
not to be dissolved by reason of certain defenses which the defendant might set up, .....	631
proceedings between adverse claimants not affected by answer or other act of defendant in the suit, .....	631
if, while proceedings are pending, original action is removed to higher court, the inquiry concerning the attachment shall also be removed, .....	631
costs may be awarded to either party in such proceedings, .....	631
damages may be, to attaching creditor if his attachment is sustained, .....	631
decision on petition to bar any claim for damages to petitioner by plaintiff on account of fraud in making attachment, .....	631
<b>EXCESSIVE, NOW REDUCED.</b>	
defendant may apply to court to which the writ is returnable, and have attachment dissolved, or part of property restored, if attachment is excessive, .....	631, 632

**ATTAINDER.**

no bill of, to be passed, .....	5
treason not to work corruption of blood or forfeiture, except, &c., .....	7

**ATTEMPT.**

to commit murder, how punished, .....	738
to extort money by threats, .....	738
to commit offences, how punished, in various cases, .....	826

**ATTENDANCE.**

of children in the schools, .....	228
costs for, what to be allowed, before justices of the peace or police court, .....	738
in actions nonsuited, defaulted, continued, &c., .....	738
day when action is disposed of, further term, &c., to be entered on docket, .....	738

**ATTORNEY-GENERAL.**

not to hold certain other offices, .....	30, 33
when and how elected, .....	37, 62
term of office of, .....	37
qualifications of, .....	37
return of votes for, .....	59, 60
vacancy in office of, how filled, .....	37

**ATTORNEY-GENERAL.—continued.**

neglecting to qualify for ten days, office to be deemed vacant, .....	37
annual report of, to legislature, .....	130
when may be put in type, .....	53
salary of, .....	129
allowance to, for clerical assistance, .....	129
and for expenses in civil actions, where state is a party, and to account for same, .....	130
to appear for commonwealth in capital cases, .....	129
and when state is a party, or interested, or upon order of governor, &c., .....	129, 130
to enforce collection of money due to state, .....	137
to assist district-attorneys before grand jury, in capital cases, .....	130
and advise them in matters relating to their office, .....	130
when present, to have management of prosecutions, &c., .....	131
to enforce application of funds for public charities, .....	130
to prosecute corporations failing to make to legislature, returns required by law, .....	130
to attend sessions of legislature, and give opinions, when required, .....	130
to advise secretary, treasurer, &c., on questions of law, .....	130
to advise the governor respecting surrender of persons demanded as fugitives from justice, .....	864
in absence of, court may appoint person to perform duties, .....	130
not to receive fees from prosecutor, nor to be counsel in certain civil cases, .....	130
no fees for travel to be taxed for, .....	732
to account with state treasurer for fees, costs, &c., .....	130
to prosecute officers of banks for violation of law, .....	302
to prosecute insurance companies, officers, or agents, for violation of law, .....	321
may prosecute loan fund associations for violation of law, .....	335
to file informations, &c., against trespassers on public property, .....	130
duties of, in relation to persons unlawfully entering or intruding upon, or holding, lands of commonwealth, .....	717-719
when lands, the title to which is in the state, trustees, guardians, treasurer, or agents, for use of Indians, .....	719
<b>ATTORNEYS FEE.</b>	
in supreme judicial court or superior court, .....	733
<b>ATTORNEYS AT LAW.</b>	
any citizen, upon three years' study, and otherwise qualified, may be admitted to practice, .....	615
or alien having made his primary declaration, &c., .....	615
may be admitted, on examination, without three years' study, .....	615
may be admitted, in either case, by supreme or superior court, .....	615
from other states, how admitted, .....	615
to take and subscribe the oath of office, .....	615
may practise in all the courts, and no distinction of counsellors and attorneys, .....	615
may act as counsel for persons claimed as fugitives from service, .....	740
may be removed for mal-practice or gross misconduct; expenses of removal, how paid, .....	615

**ATTORNEYS AT LAW — continued.**

parties may manage their own suits, or employ such counsel as they may engage, . . . . .	615
not more than two for each party to be engaged in any suit, without leave of court, . . . . .	615
any persons may act as such, in managing suits, on being specially authorized, . . . . .	616
to have a lien on execution obtained in suit prosecuted by them, . . . . .	615
neglecting to pay money on demand, liable to pay five times' lawful interest, . . . . .	615
not to appear in any case previously determined by them as judge or justice, . . . . .	615, 616
not to act in certain other cases, when judges or registers, . . . . .	602, 610
sheriffs, deputy sheriffs, coroners, and constables not to appear as, &c., . . . . .	616
penalties for so acting, . . . . .	151, 153, 164, 618
not to buy, or be interested in buying, claims for suit, nor to induce persons, by certain means, to place claims in their hands for collection, under penalty, . . . . .	618
exempt from serving as jurors, . . . . .	680
may act as counsel for fugitives from service, . . . . .	740
to certify demurrers, . . . . .	655
agreements by, respecting writs, not valid unless in writing, . . . . .	600
arrest of, on mesne process, in actions for money collected by them, how made, . . . . .	638
on execution in such actions, . . . . .	684

**AUCTION.**

goods sold by, contrary to law, to be forfeited, . . . . .	281
tenants of houses, &c., liable for unauthorized sales by, in such house, &c., . . . . .	281
penalty on persons selling by, without license, . . . . .	281

**AUCTIONEERS.**

to be licensed for one year by selectmen, &c., . . . . .	280
license of, to be recorded, . . . . .	280
fee for license, . . . . .	280
may be licensed by county commissioners, if selectmen refuse, . . . . .	280
cities and towns may designate places of sale by, &c., . . . . .	281
to give bond, . . . . .	280, 281
to keep accounts of sales, . . . . .	281
may sell at any place within his county, . . . . .	281
may sell at any place within the state, when, &c., . . . . .	281
penalty on, for receiving goods from minors, or selling before sunrise, or after sunset, . . . . .	281
for selling in place where he is not authorized to sell, . . . . .	281
for fraud or deceit, . . . . .	2
on person for selling, not licensed as, . . . . .	2
not to sell under hawkers' licenses, except in places where licensed as hawkers, . . . . .	2
provisions concerning, not to apply to sheriffs, &c., . . . . .	2

**AUDITA QUERELA.**

form and service of writ of, . . . . .	7
where to be sued out and returned in different cases, . . . . .	7
to remedy wrongful issuing of execution on recognizance for debt, . . . . .	7
writ of, to be indorsed before entry, if no one of plaintiffs resides in this state, . . . . .	6
indorser of, when may be required, or changed, after entry, . . . . .	6
after issuing of writ, court may grant injunction, as justice and equity require, . . . . .	7
pleadings, trial, and judgment, . . . . .	7
plaintiff in, entitled to recompense for what damages, . . . . .	7

**AUDITA QUERELA — continued.**

judgment in, when a bar to other action for same damages, . . . . .	70
appeal from superior court allowed to either party, as in other civil cases, . . . . .	72
plaintiff, if imprisoned on process complained of, may be enlarged on giving bond, . . . . .	73
condition of such bond, that plaintiff shall surrender himself, if, &c., . . . . .	73
when plaintiff surrenders, according to his bond, to be in custody as if writ had not been brought, . . . . .	73

**AUDITOR OF ACCOUNTS.**

when and how elected, . . . . .	3, 3
return of votes for, . . . . .	59, 60
term of office of, . . . . .	3
vacancy in office of, how filled, . . . . .	5
qualifications of, . . . . .	5
neglecting to qualify for ten days, office to be deemed vacant, . . . . .	5
to give bond, . . . . .	125
salary of, . . . . .	125
may employ one permanent clerk, . . . . .	125
salary of clerk, . . . . .	125, 126
may employ additional clerks, . . . . .	125
salary of such clerks, . . . . .	125
to examine accounts against state, and may deduct overcharges, . . . . .	126, 127
to require bills exceeding fifty dollars to be sworn to, except, &c., . . . . .	129
to make and record certificate of amount due on demands against state, . . . . .	128
to transmit such certificate to governor, . . . . .	128
to keep distinct accounts of public receipts and expenditures, school fund, and other public property, and debts, . . . . .	128
Annual report, to be made by, to legislature, . . . . .	128
may be made in print, . . . . .	33
contents of, . . . . .	128
when to be laid before legislature, . . . . .	12, 128
of expenses of office, &c., to be made to legislature, . . . . .	131
to examine treasurer's books annually, . . . . .	128
to comply with certain regulations, prescribed by governor and council, . . . . .	135
books and accounts of, to be examined by committee of the council, . . . . .	135
and by committee of accounts of legislature, . . . . .	135
to cause bank notes to be engraved, . . . . .	313
to countersign, number, and register each note by . . . . .	314

**AUDITOR OF ACCOUNTS**—*continued.*

- duties of, as to accounts of county treasurers for fines, forfeitures, and costs,..... 852, 853
- to be one of board of commissioners of alien passengers and state paupers, ..... 393

**AUDITORS.**

- may be appointed by court in actions of contract, tort, or replevin, when at issue, to hear the parties, &c., and report, ..... 616
- to give notice to parties of time and place of meeting, and may adjourn, ..... 616
- if more than one in a case, all to meet, but a majority may report,..... 616
- may be discharged by court, and case committed to same or other auditors, ..... 616

**AUDITORS**—*continued.*

- report of, to be prima facie evidence, ..... 616
- interest on, how computed, ..... 685
- compensation of, and how taxed and paid, ..... 616
- witnesses before, how may be summoned, sworn, &c., ..... 672, 673
- punishment of, for accepting bribes,..... 813
- for bribing or attempting to bribe,..... 813

**AUTHORITY.**

- conferred on more than two, may be exercised by a majority, ..... 51

**AWARDS.** (*See Arbitration.*)

- of county commissioners, committees, and referees, to bear interest, ..... 686
- form of declaration in actions on,..... 684

**B.**

**BACK BAY.**

- limitation to suits for recovery of lands by common-wealth, not to apply to land in,..... 776

**RAIL.**

- excessive, not to be required, ..... 9, 16
- when excessive is required, how party may be relieved,..... 734, 737

**IN CIVIL CASES.**

- not to be required on meane process of representatives in the general court,..... 23
- may be given by any defendant arrested on meane process,..... 635, 637, 642
- not to discharge defendant from imprisonment on sentence of fraud, ..... 642
- to be taken by bond to sheriff or other officer, and with what condition, ..... 642
- not discharged by entry of judgment, as at a former term, in actions continued nisi in supreme court, ..... 557
- not discharged by appeal or exceptions taken,..... 563
- liability of, not revived by entry of appeal or exceptions on petition, ..... 555, 563
- shall satisfy judgment against principal unless he is surrendered, or they are otherwise discharged,..... 643
- not concluded by adjudication that an amendment is for same cause of action, unless notified,..... 662, 663
- not liable, unless writ of scire facias is served on them within one year after final judgment, ..... 643
- how long held when judgment is entered in cases continued nisi,..... 557
- may be exonerated by surrendering their principal before final judgment,..... 643, 644
- may be taken anew after surrender of principal by former bail,..... 644
- when taken in cases before justice of the peace and police courts, proceedings in relation to, ..... 644
- when and how liable for support of principal after surrender, ..... 645
- taken in actions in which new defendants are brought in, to be held liable, ..... 658
- may be taken on writs sued out by sureties on administration bonds, to bring in principal,..... 506

**BAIL**—*continued.*

- Bond given by, to run to sheriff or other officer,.... 642
- to be with two sureties having sufficient in state,..... 642
- officer may examine sureties on oath, and liable if he takes only one,..... 642
- binding, although executed by one surety,.... 642
- may be approved by certain magistrates,..... 642
- to be returned and filed with writ, and time of filing noted, ..... 643
- to be sent with other papers to court appealed to, in case of appeal,..... 643
- to be considered so far matter of record that scire facias may issue on, ..... 643
- Scire facias, against, may be issued from court in which judgment was rendered, in term time or vacation, in name of creditor,..... 643
- may be issued by justices of the peace, .... 605, 644
- what shall be alleged therein, ..... 643
- must be served within one year after final judgment, ..... 643
- defendants in, may answer jointly or severally,..... 643
- costs on, to be paid by bail upon surrender of principal,..... 643
- Surrender of principal by,..... 643, 644
- may be in court where scire facias is pending, upon payment of costs, ..... 643
- in such case principal to be committed to jail, and how long held,..... 643
- may be to the jailer in county where principal was arrested, or in which the original writ was returnable, ..... 643
- in case of surrender to jailer, he may require copy of bail bond, and shall be protected by such copy,..... 643
- bail within fourteen days to furnish jailer with copy of writ and officer's return, ..... 643
- and give notice to plaintiff's attorney of time and place of commitment of principal,..... 643
- to pay costs on writ of scire facias if sued out,.. 644
- may be made in court where original action is pending or to officer holding execution, .. 644
- principal, when surrendered, shall be received by jailer and may be bailed anew, ..... 644
- before police court and justices of the peace,

**RAIL**—*continued.*

creditor to procure attendance of officer,.....	644
in such case, officer to attend and take charge of principal,.....	644
entry to be made of surrender, and principal to be committed,.....	644
copies of papers to be delivered to officer, and by him to jailer,.....	644
fees of officer,.....	644
Support of principal surrendered,.....	644, 645
if principal claims support as pauper, creditor to pay in advance or give security,.....	644, 645
ball liable for support of, until seven days after notice to creditor,.....	645
when defendant may be discharged if support is not paid,.....	645

**IN CRIMINAL CASES.**

arson, rape, and treason not bailable,.....	836
persons constitutionally committed by governor and council, senate, and house of representatives, not bailable,.....	738
to be taken by magistrates in bailable cases, when there is cause to believe prisoner guilty,.....	838
to be taken by recognizance,.....	832
by whom to be taken when persons are committed for bailable offences, or for not finding sureties of the peace,.....	737, 738, 834
not to be taken by police court, justice of peace, or commissioner, in a less sum than was required on commitment,.....	834
in what cases may be taken by magistrate, at prisoner's request, without examination,.....	831, 832
to be taken, if offered, in all cases bailable, for appearance at adjourned examination before a magistrate,.....	832
by magistrate, after examination, in all cases bailable by him,.....	833
on habeas corpus, in all bailable cases,.....	737
by justice of the peace, pursuant to order of judge, &c.,.....	737
may be allowed by supreme court, or superior court, or any judge of said courts, in all cases whatever, (except, &c.,) on writ of habeas corpus,.....	737, 738
persons held in prison on indictment, when to be bailed on their own recognizance, if not brought to early trial,.....	840
those committed on Lord's day, or on evening or afternoon preceding, may be bailed on Lord's day,.....	834
Surrender of principal by,.....	835, 836
may exonerate themselves by surrender of principal into court,.....	835
before commencement of scire facias,.....	835
before final judgment on scire facias,.....	835
after final judgment on scire facias,.....	835, 836
if scire facias is commenced, whole costs or penalty, or part thereof, the court may require to be paid,.....	835
where by act of God, or of government, or by sentence of law, principal cannot be surrendered, ball may be discharged by court, with or without costs,.....	835
principal, when once surrendered, may be bailed anew,.....	835
new bail not to have benefit of surrender, &c., like former bail,.....	835

**BAILLES.**

embezzlement by, how punished,.....	800
-------------------------------------	-----

**BAKER'S ISLAND.**

land for lighthouses on, ceded to United States,.....	41
---	----

**BALANCES.**

unclaimed, for two years or more, and held by corporations, to be advertised,.....	385
--	-----

**BALLAST.**

weighing of, may be regulated by ordinance in cities, &c.,.....	321, 322
---	----------

**BALLOTS.** (*See Elections.*)

when several officers may be voted for on one ballot,.....	58
penalty for giving more than one vote,.....	61

**BALUSTRADES, &c.**

may be regulated by city councils,.....	167
---	-----

**BANKRUPTCY.**

congress may establish a system of,.....	4
when discharge in is pleaded, from what time parties liable for costs,.....	730

**BANK BILLS.** (*See Banks.*)

how attached and disposed of,.....	624, 627
penalty for larceny of paper, &c., designed for, on printers, &c., for retaining such paper, &c., with intent, &c.,.....	736
on persons having custody of such paper, &c., retaining, with intent, &c.,.....	736
for passing as currency, except, &c.,.....	810
for passing any for less than five dollars, except bank notes,.....	810
for passing fractional bills or notes,.....	810
for wilfully and maliciously injuring,.....	810
for maliciously gathering up and retaining, to injure the business of bank,.....	810
indictment and proof, in such cases,.....	811
for having in possession five uncurrent and worthless, with intent to circulate, to defraud,.....	810
for uttering and passing such bills, with such intent,.....	811
for engraving and issuing shop bills in form of, &c.,.....	811
counterfeit and forged, to be seized and destroyed,.....	811
remuneration to prosecutors of forgers of, &c.,.....	811

**BANKS.****I. COMMISSIONERS.**

three to be appointed by governor,.....	300, 301
tenure of office,.....	301
to be sworn,.....	301
may appoint a clerk, prescribe his duties, and fix his compensation,.....	301
to visit banks within one year after going into operation, &c.,.....	301
to visit banks, savings institutions, &c., once in two years,.....	301
powers and duties at such visits,.....	301
to preserve a full record of their proceedings, and condition of each bank,.....	301
to visit banks whose charters have been annulled,.....	301
may summon, and examine under oath, all directors, &c.,.....	301
penalty for refusing to testify before, &c.,.....	301
to examine any bank or savings institution, upon request of five or more officers,.....	301
to apply to supreme judicial court for injunction upon insolvent banks,.....	301
to make annual report to secretary,.....	302
to report violation of laws, &c., to secretary,.....	302
banks not to discount notes of,.....	302
salary of, &c.,.....	302
to examine certificates of stocks held by the auditor,.....	302

## BANKS — continued.

## II. ORGANIZED UNDER CHARTERS.

## 1. GENERAL PROVISIONS.

subject to what liabilities, &c.,	302
name of, privileges, &c.,	302
where to be kept,	302
may receive deposits, loan money, and divide profits,	302
not to go into operation until one half of capital is paid in, &c.,	302
capital to be examined by commissioners appointed by governor,	302
duties of such commissioners,	302
stock not to be sold until whole amount is paid in,	302
stockholder of, not to receive loan until full amount of his shares is paid in,	302
specie, equal to fifteen per cent. of liability, for circulation and deposit, to be kept in,	302
what to be deemed such,	303
increase of capital, how to be paid in,	303
when paid in, certificate to be forwarded to secretary of commonwealth,	303
no person shall hold more than one half of capital stock of a bank, exclusive of stock held as collateral,	303
commonwealth may take stock in,	303
not to loan more than one half of capital, on pledge of their own stock,	303
not to hold their own stock except as security, under penalty,	303
stock held as security to be sold within six months, under penalty,	303
debts, limit of,	303
directors, liability of, when debts exceed amount allowed by law,	303
dissenting, &c., how exonerated from such debts,	303
not exempted from liability by directors becoming liable,	303
not to use their money, &c., in trade,	303
may sell property held by them in pledge,	303
to pay over surplus of sales of pledged property,	303, 304
may hold real estate not exceeding twelve per cent of its capital, for convenient transaction of business,	304
2. MEETINGS, VOTES, PROXIES.	
Meetings, notices of, how to be given,	304
each bank to prepare list of stockholders, &c., at least once in six months, under penalty,	304
Votes, what number, stockholders entitled to,	304
by absent stockholder, may be by proxy,	304
Proxies, votes of stockholders by,	304
salaries officers not to vote as,	304
record of, to be made, under penalty,	304
form and execution of,	304
to be filed with cashier, &c., within ten days of execution and three days of meeting,	304
for what time and meetings valid,	304
list of, to be prepared and read at meeting,	304
not to be received or asked for by salaried officers, under penalty,	304
penalty on officers for violation of provisions concerning,	306
3. DIRECTORS.	
number of, to be determined by by-laws,	306
to be not less than seven, nor more than twelve,	306
to be citizens, &c., of this state,	306
to be stockholders, holding unpledged stock,	306

## BANKS — continued.

not to be directors of two banks at same time,	306
where majority of to reside, &c.,	306
to be chosen annually, by ballot,	306
at what time to be chosen,	306
may be appointed by legislature, when the state is stockholder,	306
how may be removed,	306
vacancies, how filled,	306
majority of, to be a quorum,	306
to record notes, &c., offered for discount, and proceedings at meetings of, &c., under penalty,	306
to prepare lists of proxies, &c., to be read at stockholders' meetings,	304
liability of, in certain cases,	303
absent, &c., how exonerated,	303
may call special meetings of stockholders,	306
to choose one of their number president, and fix his compensation,	306
to appoint cashier,	306
may appoint clerks and other officers,	306
not to be liable to an amount exceeding thirty per cent. of capital stock of, unless, &c.,	306
President, to be chosen from and by directors,	306
compensation of, to be fixed by directors,	306
4. CASHIER AND LOANS TO OFFICERS.	
Cashier, to be appointed by directors,	306
to give bond,	306
exempted from serving as juror,	380
to call special meetings of stockholders, in certain cases,	306
not to be director of bank of which he is cashier, under penalty upon the bank,	306
not to hire money of such bank, under penalty upon the bank,	306
or clerk to furnish officer, &c., serving execution on lands mortgaged to bank, with a copy of note or obligation, secured by the mortgage, &c.,	306
to make annual returns, under oath, to secretary,	311, 312
form of return,	311
Officers, for conducting business of, may be appointed by directors,	306
such officers not to hire money of their own bank, under penalty upon the bank,	306
liability of, on notes, &c., limited,	306
penalty on bank, if officer liable to greater amount than allowed by law,	306
penalty on, for embezzlement,	300
taking by accomplice of, deemed taking by officer,	300
money taken in such cases need not be identified,	300
5. BILLS AND NOTES.	
no bank to pay out other than its own,	306
amount of, which may be issued,	306
not to be issued except at banking house,	306
not to be issued to be kept from circulation, under penalty,	307
in whose names to be issued,	306
to be signed by president and cashier,	306
signed by either president or cashier, and in circulation, to be redeemed,	306
altered to larger amount in circulation, bank liable for original amount,	306
to be redeemed in specie, during banking hours, under penalty,	306
denominations of,	306
fractional, not to be issued, under penalty,	306

**BANKS — continued.**

worthless and counterfeit, how to be stamped by banks,.....	306
penalty for not stamping, &c.,.....	306, 307
if stamped by mistake, bank liable to holder for its value,.....	307
not to be issued, payable at a future day certain, or with interest, except, &c.,.....	307
property of bank to be first applied for redemption of,.....	307
may be replevied by banks if unlawfully detained,.....	307
proceedings in such case,.....	307
suits on may be brought within twenty years from issue,.....	777
when, where, and how redeemable,.....	307, 308
penalty for neglect to redeem,.....	308
provisions not to extend to certain checks and drafts,.....	308
nor restrain a bank from drawing for balances due,.....	308

**6. LOANS AND DISCOUNTS.**

not to be made, except at banking house,.....	306
not to be made, unless payable by bank, in specie, &c., on demand, under penalty,.....	307
interest and exchange, exceeding six per cent., not to be taken, under penalty,.....	307

**7. TAKING LAND, &c., ON EXECUTION.**

lands of, may be sold on execution, and how officer shall proceed,.....	306
officer may adjourn sale,.....	306
lands mortgaged to, may be sold on execution,.....	306
cashier or clerk to furnish officer, &c., serving execution with a copy of note or obligation, &c.,.....	306
officer making seizure to file notice in registry of deeds, &c., if required,.....	306
transfer of note, &c., not valid after such notice,.....	306, 309

**8. LIABILITY OF STOCKHOLDERS.**

stockholders, liability of, in case of loss, &c., of capital stock by mismanagement of directors,.....	306
not so liable exceeding the amount of stock actually held by,.....	306
liable for redemption of bills when bank stops payment,.....	306
transferring shares to avoid such liability subject to same on the shares transferred, ..	306
at expiration of charter, liable for redemption of bills,.....	306
who, believing a bank insolvent, transfer shares &c., subject to the same liability,.....	306
obliged to pay debt, &c., against bank, may recover from other stockholders, &c., ...	306
corporations, being stockholders, under the same liabilities, &c., as individuals, .....	306

**9. LOANS TO COMMONWEALTH.**

loan, not exceeding five per cent. of capital stock, to be made to the commonwealth, upon requisition of the legislature, .....	306
loan reimbursable by five annual instalments, or at shorter period, interest not exceeding five per cent.,.....	306
neglecting to loan, for thirty days after notice, to pay two per cent. a month,.....	306
suits to be instituted by the treasurer for recovery of penalty,.....	306

**BANKS — continued.**

treasurer to give notice to president or cashier of amount required,.....	306
amount of loan required, to be forthwith placed to credit of the state,.....	306
loan demanded, to be equalled by treasurer among the several banks, having reference to obligation of bank, and amount previously borrowed,.....	306, 309

**10. TAXES.**

to furnish to treasurer, in April and October, statement of stock paid in, &c., until capital is paid, .....	306
to pay to the treasurer, in April and October, a tax of one half per cent. &c.,.....	306
treasurer to commence an action for neglect,.....	306

**11. WEIGHTS.**

weights to be proved and sealed by treasurer, &c., once in five years,.....	306
no tender of goods by banks valid, weighed with other weights, .....	306

**12. RETURNS.**

in Boston, to transmit weekly returns to secretary,.....	306
in South Boston and out of Boston, to transmit monthly returns to secretary,.....	306, 311
penalty for neglect,.....	311
blank forms for returns, to be furnished by secretary,.....	311
form of return,.....	311
annual return, penalty for neglect to make,.....	311

**13. INVESTIGATIONS.**

legislature may examine into the doings of, &c., ..	311
and may declare charter forfeited,.....	311
penalty on officer neglecting to exhibit books, &c., ..	311
one eighth of stockholders in value may choose committee to investigate, &c., ..	311
such committee, in certain cases, to report to supreme judicial court,....	311
and court may issue injunction,.....	311

<b>14. ANNULING AND EXPIRATION OF CHARTER.</b>	
stockholders, by a majority of votes, &c., may annul charters of,.....	311, 313



**BANKS — continued.**

by a vote of three fourths of its stockholders, may increase its capital,.....	314
subject to laws relating to other banks, so far as consistent with the following provisions,.....	313
business to be carried on at banking house only,....	314
neglect to carry on business to work a forfeiture of its privilege,.....	314
and it may be proceeded against, &c.,.....	314
annual meetings, when to be held,.....	315
Notes, to be engraved and printed by auditor, ....	314
to be countersigned, registered, and numbered, before delivered to banks,.....	314
when returned to auditor, to be destroyed in presence of president and cashier,.....	314
and certificate thereof to be entered on books,.....	314
to be delivered to banks upon receipt of public stock, &c.,.....	314
what stocks and amount thereof to be transferred to auditor for such notes,.....	314
what part of such stock to be exempt from taxation,.....	314
to be at all times secured in full by public stocks,.....	314
securities for, may be exchanged or surrendered, &c.,.....	314
to be stamped by auditor,.....	314
when withdrawn, how to be indorsed,.....	315
when signed and executed by bank, may be circulated as money,.....	315
penalty on bank, when payment of, in gold or silver, is refused,.....	315
may be protested in such case,.....	315
if bank neglects to redeem for ten days after notice from auditor, may be redeemed from trust funds in his hands,.....	315
proceedings in such case,.....	315
penalty on auditor for signing excess of,.....	315
plates, dies, &c., of, to remain in custody of auditor,.....	315
expense of such plates, &c., by whom paid,.....	315
bank to pay out none but its own, and of other banks of this state,.....	315
suits on, may be brought within twenty years from issue,.....	777
Stocks, public, to be transferred by banks to auditor to secure notes,.....	314
may be exchanged or surrendered,.....	314
to be stamped,.....	314
when withdrawn, how to be indorsed,.....	315
when to be applied for redemption of notes,....	315
banks to receive the interest and dividends on,.....	315
auditor may give powers of attorney for that purpose, and revoke the same,.....	315
dividends on, received by auditor, to be held in trust for bank,.....	315
banks to make returns of, to secretary,.....	315
to be examined by bank commissioners,.....	315
to be exchanged, &c., if commissioners require,.....	315
when to be returned to bank,.....	315
how exonerated from liability to redeem bills,....	316
when insolvent, may be restrained by injunction from supreme judicial court,.....	316
when in hands of receivers, auditor to transfer to, stocks belonging to,.....	316
provisions concerning, may be altered or repealed by legislature,.....	316
may be dissolved by special act of legislature,....	316

**BANKS — continued.**

remedies against bank and its officers not impaired by such dissolution,.....	316
provisions to apply to banks heretofore organized,.....	316
<b>IV. SAVINGS BANKS.</b>	
by what provisions to be governed,.....	316
Officers of, how chosen or appointed,.....	316
to be sworn,.....	316
tenure of office,.....	316
vacancies, how filled,.....	316
chosen, to be notified by clerk, &c.,.....	316
list of, who accept, to be published in newspaper by clerk,.....	316
penalty on clerk for neglect or false publication,.....	316
Treasurer, how appointed,.....	316
to give bond,.....	316
to make annual returns to assessors,.....	318
to inform overseers of poor, upon request, of deposits of paupers,.....	318
to inform assessors of amount exceeding two hundred dollars of any resident of a city or town,.....	318
penalty on, for refusal of, or false information,.....	318
Special meetings of, may be held by order of trustees,.....	317
to be called by treasurer on written request of ten members,.....	317
all meetings to be advertised in newspaper,....	317
members of, how elected, and how may withdraw,.....	317
no person to continue a member after removal from state,.....	317
may receive money on deposit,.....	317
limitation of amount of deposit by one person,.....	317
deposits, how to be invested,.....	317
investments restricted,.....	317
may loan on bonds, provided, &c.,.....	317
no member of a committee, or officer of, to borrow, &c.,.....	317
dividends, how made, and deposits, how withdrawn,.....	317
to make annual returns to the secretary,.....	317, 318
money deposited in the name of minors may be withdrawn by them,.....	318
legislature may make further regulations for the government of,.....	318

**V. BANKS AND SAVINGS BANKS.**

closing concerns, trustees to make annual reports,.....	319
penalty on, for neglect,.....	319
not subject to insolvent laws,.....	319

**BARK.**

measurers of, how chosen or appointed,.....	161
to be sworn,.....	161
fees of,.....	278
to be measured, &c., like wood,.....	278
penalty for selling without being measured,.....	278
sale, inspection, &c., of, may be regulated by towns and cities,.....	278, 279

**BARLEY.**

standard weight of bushel of,.....	265
------------------------------------	-----

**BARNSTABLE.**

land in, ceded to United States,.....	44, 45
regulations concerning shell fish on south shore,....	433
County, provision concerning registry of deeds, &c., in,.....	154

**BARS.**

- on or across town or private way, how may be removed, ..... 251
- punishment for throwing down and leaving open, &c., ..... 856

**BASS.**

- provisions respecting the taking of, ..... 431

**BASS RIVER.**

- land at, ceded to United States, ..... 45

**BASTARD.**

- Mother of, may institute process against alleged father, ..... 404
- may testify, &c., in support of complaint, ..... 405
- examination of, may be given in evidence on trial, ..... 405

- Complaints, how and by whom made, if woman refuses to complain, ..... 404

- where to be made, if woman is in state almshouse, ..... 404

- not to be withdrawn without consent of overseers of poor, ..... 405

- complainant not required to support defendant in prison, ..... 406

- warrant where returnable in different cases, .... 404, 570

- Alleged father of, may be required to give bond to appear, &c., ..... 404

- may be committed till bond is given, ..... 404
- may be subsequently discharged, upon giving bond, ..... 405

- bond of, to remain in force till final judgment, ..... 404

- may be required to give new bond, if sureties are dissatisfied, &c., ..... 405

- to be adjudged the father, if jury find him guilty, ..... 405

- if found not guilty, to be discharged; and verdict final in either case, ..... 405

- Adjudged father of, to maintain, with assistance of mother, ..... 405

- to give bond to perform order of court, indemnify town, &c., ..... 405

- may be committed till he gives such bond, .... 405
- entitled to relief as a poor debtor, after ninety days' confinement, ..... 405

- how to give notice of intention to take poor debtor's oath, ..... 405

- liable to mother, and town, &c., after discharge, on such oath, ..... 405

- settlements made between parents of, not to relieve father from liability to town for support of, ..... 405

- prosecutions to be heard at civil term of superior court, ..... 405, 406

- for what reasons may be continued, ..... 404

- to inherit from mother and maternal ancestors, ..... 474

- mother of, heir to, ..... 474
- may be bound as apprentice by mother, ..... 549

- where parents intermarry, to be considered legitimate, ..... 474

- issue of marriage dissolved on account of consanguinity, &c., of parties, to be deemed to be, ..... 534

- mother of infant, how punished for concealing death of, ..... 818

- how may be indicted, and what verdict given, .. 818

**BEACHES.**

- provisions respecting improvement of, ..... 750-752

(See Meadows.)

**BEACON.**

- on spit of sand in Boston harbor, ceded to United States, ..... 44

**BEASTS.**

- of the plough, exempt from distress for taxes, ..... 81
- how impounded for going at large contrary to law, or doing damage, ..... 126, 126

- damage done by, may be sued for in an action of tort, ..... 126

- distrainted or impounded, how may be repaid, ..... 720, 721

- punishment for wilfully killing, maiming, &c., .... 305

- for cruelly beating and torturing, ..... 322
- for driving, &c., on railroads, without leave of proprietors, ..... 323

- not ordinarily kept in confinement, when subject of larceny, ..... 729

**BEDS AND BEDDING.**

- what exempt from distress and attachment, &c., ..... 82, 82

**BEEF.**

- weighers of, when and how appointed, ..... 253
- not to be dealers in cattle, ..... 253
- to be sworn, ..... 253

- fees of, ..... 253

**BEER.**

- strong and lager, considered intoxicating liquor, .... 442
- penalty for setting up exhibitions at which is sold beer, ..... 464

**BEGGARS.**

- idle and dissolute, how to be arrested and punished, ..... 539

**BELL-ROPE.**

- penalty for wilfully, &c., cutting within twenty-four hours before fire, ..... 736

- during the burning, ..... 736, 737

**BELLS.**

- to be used with sleds or sleighs, drawn by horses, on roads, ..... 423

**BERRIES.**

- to be sold by the strike or level measure, ..... 264

**BIBLE.**

- to be read daily in public schools, ..... 213
- exempt from attachment, &c., ..... 655

- copy of, to be furnished at expense of county, to each prisoner in jail and house of correction, ..... 653

**BIGAMY.**

- prohibited, and how punished, ..... 520, 517, 518

**BILL OF DISCOVERY.**

- jurisdiction of, given to supreme court in equity, ... 539

**BILL IN EQUITY.**

- cases in equity may be commenced by, ..... 539

(See Equity.)

**BILL OF LADING.**

- making false, to defraud insurer, how punished, .... 339

**BILL OF PARTICULARS.**

- to be filed on entry of action, when either common count is used, ..... 65

- may be ordered by court to be filed by either party to a suit, ..... 65

- items in, to be numbered consecutively, ..... 65
- deemed part of record, and to be answered or replied to as such, ..... 65

- every item to be answered specifically, ..... 65

**BILLS OF EXCHANGE.**

- maturing on Sundays and public holidays, when payable, ..... 51

- when may be protested, in such case, ..... 53
- damages on protested bills, payable beyond limits of United States, ..... 234, 24

- payable without this state, and within United States, ..... 24

- payable within this state, ..... 24
- grace allowed on, ..... 24

**BILLS OF EXCHANGE** — *continued.*

- parties severally liable on, may be joined in same action,..... 654
- how proved against estates of insolvent debtors,..... 584, 586

**BILLS AND RESOLVES.**

- to be approved by governor, or returned to legislature with objections,..... 17
- how to become law, if governor objects,..... 17
- if not returned by governor within five days, to become law, unless legislature adjourns,..... 18, 82
- to be engrossed on parchment, under direction of secretary,..... 49

**BILLIARD TABLES AND BOWLING ALLEYS.**

- licenses for keeping, may be granted by selectmen, &c.,..... 463
- penalty for keeping without license,..... 463
- for admitting minors to,..... 463
- for allowing play after six o'clock Saturday afternoon, &c.,..... 463
- officers may enter, &c., to enforce laws,..... 463
- penalty for erecting, &c., bowling alley without license,..... 463
- jurisdiction of offences for keeping contrary to law, given to justices of peace,..... 609

**BILLINGS GATE ISLAND.**

- land on, ceded to United States,..... 45

**BIRTHS.**

- city and town clerks to record and index facts concerning,..... 168
- form of record,..... 168
- to be reported to clerks by parents,..... 169
- return to be made by clerk to secretary, under penalty,..... 169
- record of clerk concerning, to be prima facie evidence in legal proceedings,..... 169
- certificate of clerk to be evidence of such record,.... 169
- superintendents of state almshouses to make returns concerning,..... 169, 170
- town clerks, where such almshouses are located, to be exempt from making returns,..... 170
- towns may make additional rules concerning registration of,..... 170
- registrars may be appointed in certain towns, &c., to make record, &c., concerning,..... 170

**BIRD ISLAND.**

- ceded to United States,..... 44

**BIRDS.**

- certain, penalty for killing, &c., at certain seasons,..... 429
- at any time,..... 429, 430
- for taking by traps, &c.,..... 430
- for killing on salt marshes, at certain seasons,..... 430
- grouse or heath hen,..... 430
- penalties may be suspended,..... 430
- plover, &c., at certain seasons,..... 430
- or at any time, with unusual implements,.... 430
- search warrants for grouse may be issued in certain cases,..... 430
- not ordinarily kept in state of confinement, when subject of larceny,..... 799

**BLASPHEMY.**

- how punished,..... 819

**BOARD OF ACCOUNTS.**

- in Suffolk county, how constituted, and general duties and compensation of,..... 149, 150
- to settle and allow accounts for expenses of keeping prisoners in house of correction, &c.,..... 864, 865

79\*

**BOARD OF DIRECTORS OF PUBLIC INSTITUTIONS** for the city of Boston.

- powers and duties of,..... 384, 386, 388, 389

**BOARD OF EXAMINERS.**

- of whom to consist,..... 149
- to examine returns of votes for county commissioners,..... 60
- when to meet for this purpose,..... 60
- to notify person chosen,..... 60
- to file returns, after examination, in clerk's office,..... 60
- penalties for neglect of duty,..... 60
- to examine and allow accounts of commissioners,.... 149
- compensation of,..... 149

**BOARD OF HEALTH.**

- may be chosen by towns, if no special provision is made by law,..... 188
- of what number to consist,..... 188
- or health officer may be chosen,..... 188
- selectmen to be, if none chosen,..... 188
- how appointed, or constituted, in cities,..... 188
- and if not appointed with full powers, city council to act,..... 188
- may appoint a physician, and establish his pay,.... 188
- to regulate fees, &c., of persons employed in execution of health laws,..... 188
- to make regulations respecting nuisances, causes of sickness, &c.,..... 188
- as to articles that may contain infection,..... 188
- penalty for violating such regulations,..... 188, 189
- to give notice of regulations,..... 189
- to examine into and abate nuisances, &c.,..... 189
- may order nuisances on private property to be removed by owner, &c.,..... 189
- penalty on owner, &c., for neglect, &c., to remove same,..... 189
- how such order to be served on owner,..... 189
- if premises are unoccupied,..... 189
- may remove nuisance, &c., at expense of owner, &c., if he neglects,..... 189
- may notify occupants of unfit dwellings to cleanse or to quit premises,..... 189
- may cleanse the same, or remove occupants forcibly, if they neglect,..... 189
- such premises not again to be occupied without written permission of,..... 189
- penalty for occupying without such permission,..... 189
- courts may order nuisances to be abated under direction of,..... 189
- may make compulsory examinations of premises, if owners refuse,..... 190
- how to proceed in such examinations,..... 190
- may grant permits for removal of nuisances, sick persons, and infected articles,..... 190
- may remove infected person to separate house, &c.,..... 190
- charges of such removal, &c., by whom to be paid,..... 190
- proceedings in case infected person cannot be removed,..... 190
- may prevent entrance of infected persons from other states, without license,..... 190
- penalty on person coming into the state from infected places without such license,..... 190
- may, under warrant of two justices, remove sick person, impress houses, nurses, &c., for the sick,..... 190
- may apply to a justice for warrant to impress men, to secure, &c., infected articles,..... 190, 191

**BOARD OF HEALTH—continued.**

such warrant to be issued by justice,.....	191
may authorize impressing of houses, &c., for safe keeping of infected articles,.....	191
may be executed by breaking open houses, &c., if necessary,.....	191
in execution of, officer may require aid,.....	191
penalty for refusing to aid officer,.....	191
expenses of securing infected articles to be paid by owner,.....	191
compensation for houses and services impressed to be made by towns,.....	191
may order removal of certain sick prisoners to hospital, &c.,.....	191
return of such removal to be made to court,....	191
may make regulations concerning quarantine of vessels in seaport towns,.....	192
may remove foul, &c., vessels to quarantine ground,.....	192
to have charge of hospitals, &c., in towns,.....	192, 198
to provide hospitals when dangerous disease breaks out,.....	198
may cause sick, &c., persons to be removed thereto, unless, &c.,.....	198
to give public notice, &c., when dangerous disease exists,.....	198
to assign places for trades, &c., which are nuisances, &c.,.....	198
such assignment to be recorded,.....	194
may forbid the exercise of such trades, &c.,.....	194
orders forbidding same, how to be served on occupant,.....	194
penalty for disobeying order,.....	194
appeal to superior court and trial by jury,.....	194
trade not to be exercised during pendency of appeal,.....	194
form, return, and effect of verdict,.....	194
costs in such cases,.....	194
when places assigned are nuisances, may be revoked by superior court,.....	194
may make, and shall give notice of, regulations concerning burial grounds, &c.,.....	198

**BOARDING-HOUSES AND TAVERNS.**

Keepers of, to give names of persons taxable and liable to enrolment to assessors, under penalty,.....	77, 91
to have lien on baggage and effects of guests or boarders brought to their house,.....	770
how lien may be enforced,.....	770
not to have lien upon wearing apparel of seamen, in certain cases,.....	290, 770

**BOATS.**

for transporting stone, regulations of,.....	290, 291
of fishermen exempt from attachment and levy on execution,.....	688
unlawful taking and using of, how punished,.....	801

**BONDS.****GENERAL PROVISIONS.**

of corporations and joint stock companies negotiable,.....	298
Suits upon, how declared on,.....	664
forms of declaration on,.....	664
judgment to be for penal sum, when it appears that condition is broken,.....	686
execution to issue for sum found due,.....	686
amount due for subsequent breaches may be recovered by scire facias,.....	686
in such case, amount how assessed on scire facias,.....	686
above proceedings not to prevent other suits for non-performance of contract,.....	686

**BONDS—continued.****PROBATE.**

miscellaneous provisions respecting,.....	606, 607
sureties to be residents of this state, and approved by judge,.....	506
to be examined by judge, his approval indorsed thereon and filed,.....	506
when need not contain provision to account for proceeds of real estate,.....	506
when there are two or more persons appointed to a trust, joint or separate bonds may be taken,.....	506
if sureties or penalty is insufficient, new bond may be required,.....	506
surety may be discharged on petition,.....	506
if principal fails to give new bond when required, to be discharged from trust,.....	506
prior sureties to be liable for breaches before new bond is approved,.....	506
By administrators, when to be given, and conditions of,.....	498
by special administrators,.....	494
public administrators,.....	498, 497
By executors, when to be given, and conditions of,.....	491
in case executor is residuary legatee,.....	491
By guardians, when required, and conditions of,.....	506
By trustees, when required, and conditions of,.....	501
May be put in suit, by creditors next of kin, legatees, &c., in different cases,.....	506, 506
how when judge is obligor,.....	506
proceedings in such case,.....	506
writs, how indorsed, &c.,.....	506
indorsers of, liable for costs,.....	506
action on, if not brought against, or writ not served on principal resident in state, to be continued at request of sureties, to bring in principal,.....	506
sureties on, when sued without principal, may have writ to arrest or attach property, and summon him to appear as defendant,.....	506
judgment, if for plaintiff, to be rendered against principal and sureties,.....	506
when rendered, how and in whose name, &c., execution shall be awarded,.....	506
execution on such judgment, how issued and served,.....	506, 507
moneys collected by suit on, how disposed of, for new breach of, scire facias may issue on original judgment for further damages,.....	507

**RESPECTING PROPERTY ATTACHED.**

To dissolve attachments, how given and approved,.....	62
By debtor whose goods are attached to pay appraised value, and prevent sale,.....	62
to be taken by officers, if offered by debtor, to be returned with writ, as bail bonds are, if forfeited, may be sued by creditors in officer's name,.....	62
writ on, to be indorsed with names of all the creditors who sue,.....	62
all creditors, whose names are indorsed on writ, liable to execution for costs,.....	62
money recovered on, after deducting expenses, to belong to attaching creditors, and be distributed by court,.....	62
judgment may be rendered, and execution	

**BONDS — continued.**

awarded to the several creditors, as in suits on administration bonds,.....	629, 630
or one execution may issue for all the creditors,.....	630
execution not to be awarded, without reserving for prior attaching creditors, though they did not sue,.....	630
before final judgment on, any attaching creditor may become a party to suit,.....	630
after judgment on, attaching creditor not a party to the suit on, may have scire facias to recover what may be due to him,.....	630
suit on, and scire facias on judgment on, limited to a year after cause of action. ( <i>See Attachment.</i> ).....	630
By any of the owners of goods attached on suit against part owner,.....	630
to be taken by officers, if offered by debtor or other part owner, and property delivered to him,.....	630
to be returned, sued, &c., as bonds above mentioned given by debtors to prevent sale,.....	630

**ISSUED BY RAILROAD COMPANIES.**

how issued, secured by mortgage, &c.,.....	362-367
--	---------

**IN OTHER CASES.**

By plaintiff on taking out execution against absent defendants,.....	605, 646
In estates of insolvent debtors, may be required of assignees,.....	586
of assignees, how sued,.....	586
bottomry and respondents, how proved against debtor's estate,.....	584, 596
poor debtor, when final judgment is rendered against him, or when surrendered by bail after judgment, to obtain discharge,.....	640
action of contract may be brought on such bond,.....	641
Bail bonds. ( <i>See Bail.</i> ).....	642
In actions of replevin. ( <i>See Replevin.</i> ).....	730, 731
To obtain execution for costs before appeal from taxation is determined,.....	782
For keeping conditions of pardon,.....	855
where to be deposited and when prosecuted,.....	855
By various public officers. ( <i>See Titles of respective Officers.</i> )	

**BONFIRES.**

punishment for making within ten rods of building,.....	818
---	-----

**BOOKS.**

used in schools, provisions concerning,.....	218, 219
what exempt from attachment and execution,.....	624, 688

**BOOTS, &c.**

makers of to have exclusive right to stamp,.....	270
how stamped, stamp to be deemed warranty,.....	270
not deemed merchantable unless stamped,.....	270
penalty for fraudulently stamping with another's name,.....	270

**BOSTON.**

city of, lighthouse, on Light-House Island, in harbor of, ceded to United States,.....	44
beacon and spit of sand in harbor of, ceded to United States,.....	44, 45
Castle, Governor's, George's, and Lovel's Islands, in harbor of, ceded to United States,.....	44

**BOSTON — continued.**

land on Long Island Head, in harbor of, ceded to United States,.....	44
Nix's Mate, in harbor of, ceded to United States,....	45
Great Brewster Island, in harbor of, land on, ceded to United States,.....	45
site for beacon on Point Alderton Bay, ceded to United States,.....	45
"Masonic Temple," in, ceded to United States,.....	45
harbor of, what to be deemed limits of, for certain purposes,.....	290
penalty for boarding vessels in, without leave, except by pilot, &c.,.....	290
county property in Suffolk, to belong to,.....	144
to provide county buildings, and pay all county charges,.....	144
aldermen to act as county commissioners in,.....	148
criminal jurisdiction over islands and waters in harbor of,.....	145
treasurer of, to be treasurer of Suffolk county,.....	149
powers and duties of aldermen in laying out ways in,.....	242
in laying, maintaining, &c., drains and sewers in,.....	253, 254
in relation to signs, gates, &c., at railroad crossings,.....	361
lunatic hospital in, special provisions concerning, not repealed,.....	413
agents for sale of liquors in, to be appointed by state liquor commissioner,.....	439
mayor and aldermen of, to put in suit bond of manufacturers of liquors, upon breach thereof,.....	440
actions by and against, in what county to be brought,.....	621
how may be removed, when brought in county of Suffolk, by Boston,.....	621
inhabitants of, not thereby disqualified from being jurors in any case,.....	618
members of fire department of, exempt from serving as jurors,.....	680
auditor of to audit coroners' accounts in Suffolk,.....	850
Board of directors for public institutions in, to make annual returns to secretary concerning paupers,.....	394, 395
penalty on, for not making such returns,.....	395
powers and duties of,.....	858, 859

**BOTTOMRY.**

contract of, need not be recorded,.....	767
how proved against estates of insolvent debtors,.....	584, 598

**BOUNDARIES.**

Of towns, provisions respecting,.....	157, 158
Of counties,.....	43, 144
wilful and malicious injury or destruction of monuments, &c., of, how punished,.....	808

**BOUNDS.**

permanent, to be erected on roads,.....	243, 244
---	----------

**BOWLING ALLEYS.**

licenses and regulations of,.....	468
jurisdiction of offences for keeping contrary to law,.....	609

**BRAWLERS.**

common, how arrested and punished,.....	820, 821
---	----------

**BREAD.**

weight of loaf,.....	258
how sold,.....	258
prices of, to be displayed where sold,.....	258
to be weighed in presence of buyer,.....	258
penalty for violation of these provisions,.....	258
provisions not to apply to rolls or fancy bread,.....	258

**BREAKING.**

- dwelling-house, with intent to commit felony, after having entered with such intent, the offender being armed, &c., or making an assault, how punished,..... 797
- the offender not being armed, &c., how punished,..... 797

**BREAKING AND ENTERING.**

- dwelling-house by night, to commit felony, any person being lawfully therein, and the offender being armed, or making an assault, how punished,..... 797
- the offender not being armed, nor arming himself, nor making an assault, how punished,..... 797
- any building, ship, or vessel, in night time, with intent to commit felony, how punished,..... 797
- in day time, or entering in the night time without breaking, with such intent, persons lawfully therein being put in fear, how punished,..... 797
- in day time, or entering dwelling-house in night time without breaking, with such intent, no person being put in fear,..... 797

**BRIBERY.**

- conviction of, in obtaining election, &c., to disqualify party from holding office of trust,..... 80
- giving of bribes to officers, how punished,..... 812
- acceptance of bribes by officers, how punished,.... 812
- corrupting jurors, arbitrators, &c., how punished,..... 818
- acceptance of bribes by jurors, arbitrators, &c., how punished,..... 818
- of officers to omit duty, how punished,..... 814

**BRIDGES.**

- On highways, to be kept in repair by towns,..... 245
- where several towns are required to maintain bridge, county commissioners may make orders for repair,..... 245
- when life is lost, through defect of, county, &c., liable to fine of one thousand dollars,..... 247
- damages caused by defect in, to be recovered of party liable to repair,..... 247
- defendants in such cases may make tender to plaintiffs,..... 247
- penalty on towns for neglect to repair,..... 247
- finer imposed in such cases, how appropriated,..... 248
- in suits for injuries, when location not to be denied,..... 248
- over railroad, construction of, to be determined by county commissioners,..... 357, 358
- over or under railroad, how to be maintained,..... 358
- Private proprietors of, how organized, &c.,..... 248
- may choose clerk, surveyor, and assessors,..... 248
- powers and duties of such officers,..... 248
- not to be travelled over by horses faster than a walk, if by-laws forbid,..... 250
- county commissioners, town, or proprietors, to make by-laws,..... 250
- such by-laws made by town, to be approved by county commissioners,..... 250
- penalties for violation of by-laws, how recovered,..... 250
- not to be recovered, unless by-laws are posted up,..... 250
- On turnpikes, damage by breaking, &c., of, not to

**BRIDGES — continued.**

- be paid by corporation if caused by too great weight,..... 35
- corporation not liable for deficiency in, to any person whose carriage and load exceed dimensions,..... 247, 248
- wilful injury to railings, &c., of, how punished,..... 308
- BRIGADIER-GENERALS.**
- how chosen or appointed, and commissioned,..... 2, 5
- (See *Militia*.)
- BRINGING MONEY INTO COURT.**
- in case of tender,..... 671
- form of defendant's answer in such case,..... 688
- costs, in such case,..... 780
- BROTHERS.**
- when to inherit property of brothers or sisters,..... 674
- BRUSHWOOD.**
- burning of, so as to set fire to woodland in certain portions of Bristol and Plymouth counties, forbidden,..... 807
- forfeitures, how recovered,..... 807
- BUCK WHEAT.**
- standard weight of bushel of, and regulations respecting sale,..... 265
- BUILDINGS.**
- when to be deemed boundaries of highways,..... 251
- may be pulled down by order of firewards,..... 176
- owners, when indemnified in such cases,..... 176
- when adjudged nuisance, taken down, &c.; costs how paid,..... 251
- burnt, dilapidated, &c., when adjudged nuisance, how disposed of,..... 453
- owner aggrieved, may have jury as in case of highways,..... 542
- verdict of jury, costs, &c., in such case,..... 453
- provisions subject to acceptance by towns, &c.,..... 453
- resorted to for prostitution, gaming, &c., to be deemed common nuisances,..... 454
- used as dwellings, and unfit, how cleaned, &c., by order of board of health,..... 129
- Hens on for labor and materials,..... 762, 765
- punishment for burning, in different cases,..... 737
- for breaking and entering,..... 737
- wilful, &c., injury to by gunpowder,..... 808, 804
- by oil of vitriol, coal tar, &c.,..... 804
- BUNKER HILL MONUMENT.**
- exempted from taxation,..... 74
- BUOYS.**
- ceded to United States,..... 44
- BURGLARIOUS INSTRUMENTS.**
- making, mending, having in possession, knowingly, with intent, &c., how punished,..... 739
- BURGLARS' TOOLS.**
- making, &c., how punished,..... 739
- BURGLARY.**
- how punished,..... 737
- (See *Breaking and Entering*.)
- BURIAL.**
- rights of, exempt from taxation,..... 74
- exempt from levy on execution,..... 68
- BURIAL GROUNDS.**
- exempted from taxation,..... 74
- towns may grant money for,..... 139
- corporations for establishment of, how organized,..... 126, 138
- powers, &c., of,..... 138
- lots in, not divisible,..... 137
- if more than one heir to lot, representative to be designated,..... 138

**BURIAL GROUNDS — continued.**

cities and towns to provide suitable places for,.....	196
private land not to be used for, &c., except, &c.,.....	196
regulations concerning, may be made by boards of health,.....	196
notice of, how given,.....	196
when closed by order of board of health, notice how to be given,.....	196
owner of tomb closed by board, may appeal, and have trial by jury,.....	196
order to remain in force pending the appeal,....	196
proceedings, when order is sustained and reversed,.....	196, 197
penalty for using private land for, unless, &c.,.....	197
use and occupation of, to be evidence of title to,....	197
highways not to be laid out through, without special authority of law, or consent of town,.....	244
not to be laid out through private burial place without consent of proprietors,.....	244
opening road, canal, &c., through, without consent, how punished,.....	822
when buildings, &c., shall be deemed boundaries of,.....	251
wilful injury to, or to enclosures, or appurtenances, how punished,.....	197, 821, 822

**BURIALS.**

provisions concerning,.....	196, 197
superintendents of, to make returns to town clerks of certain facts respecting deaths,.....	169
compensation for making return,.....	169
to give notice of burials made without certificate of town clerk, under penalty,.....	169
of deceased strangers, who are paupers, to be made by overseers of poor,.....	196, 893
expenses, how paid,.....	893
of strangers found dead, &c., expense how paid,....	850
of others found dead,.....	850

**BURNING.**

of dwelling or other buildings, in night or day, how punished,.....	796
of wood, lumber, hay, or grain, in stacks or otherwise, standing trees, grass, &c., or soil itself,.....	796
married woman liable for burning such property of her husband,.....	796
of property insured to injure the insurers,.....	796
wilfully, &c., cutting, &c., bell rope, or injuring fire engine, or apparatus, within twenty-four hours before fire, how punished,.....	796
doing the same during the burning, how punished,.....	796
accessory before the fact, and after the fact, who deemed, and how punished,.....	796, 797

**BUSHEL.**

grain, &c., to be sold by,.....	265, 278
standard weight of, for various kinds of grain,.....	265
of potatoes, onions, and salt,.....	278

**BUTTER AND LARD.**

inspector-general of, how appointed, and term of office,.....	258
to be sworn and give bond,.....	258
may appoint deputies,.....	258, 259
deputies to make return semiannually,.....	258

**BUTTER, &c. — continued.**

to be sworn and give bond,.....	259
fees of,.....	259
penalty on, for neglect to inspect, &c.,.....	259
to make returns annually to secretary,.....	259
contents of return,.....	259
fees of,.....	259
penalty on, for neglect to inspect, &c.,.....	259
manner of inspecting,.....	259
casks of, how to be branded,.....	259
size of kegs and quality of casks,.....	259
casks to be filled with brine, before packing,.....	259
weight and name of packer to be branded on each cask,.....	259
imported, may be shipped without inspection,.....	259
when may be seized and libelled,.....	260
penalty for counterfeiting brand of inspector, &c.,.....	259, 260
for putting other butter, &c., into branded kegs, &c.,.....	260
for exporting, &c., not inspected,.....	260

**BUYING.**

grouse unlawfully killed, &c., how punished,.....	480
of notes or other demands by attorneys, sheriffs, &c., with intent, &c., how punished,.....	618
property known to be stolen, how punished,.....	801
jurisdiction of justices of the peace and police courts, in such cases,.....	570, 609

**BUZZARD'S BAY.**

Bird Island, in, ceded to United States,.....	44
Dumpling Rock, in, ceded to United States,.....	44

**BY-LAWS.**

in cities, ordinances are,.....	52
By towns, may be made, subject to approval of superior court,.....	158, 159
may be annulled by general court,.....	82
may be made respecting weighing, &c., lighters,.....	291
regulation of carriages in cities,.....	167
erection of balustrades in cities,.....	167
pasturing cattle on highways,.....	250
driving fast over bridges,.....	250
registration of births, marriages, and deaths,.....	170
inspection and sale of bark in cities,.....	279
truant children, &c.,.....	230
dealing in junk, &c.,.....	457
pawnbrokers, &c.,.....	458
gunpowder, camphene, &c.,.....	460, 461
dogs,.....	463
jurisdiction of offences against, given to justices of the peace,.....	608
complaints, &c., founded on, need not set forth any part thereof,.....	838
prosecutions under, before police courts, &c., how discontinued,.....	842

(See Towns.)

By corporations,.....	836
By proprietors of lands, wharves, &c., lying in common,.....	880
of bridges,.....	250
By fire departments and fire districts,.....	179, 181
By library associations,.....	208
By county commissioners, respecting fast driving over county bridges,.....	250

## C.

## CALENDAR.

- of prisoner in jails, &c., to be kept,..... 860
- penalty on master, &c., for not keeping,..... 860
- to be presented to superior court, criminal term, for inspection,..... 868

## CALVES.

- penalty for killing for sale, under four weeks old,... 822
- for knowingly selling, or having, with intent to sell, such meat, ..... 822

## CAMPBENE, &amp;c.

- storage and sale of, how may be regulated,..... 461

## CAMP MEETINGS.

- penalty on peddling goods, keeping booths, &c., without permission, within mile of place of,..... 819
- not to apply to regular and usual place of business,..... 819

## CANALS.

- conductors of boats on, to exhibit certificates of lading to collectors of toll,..... 847
- to pay costs of unloading, &c., if loading be found greater than in certificate,..... 847
- required contents of such certificate,..... 847
- penalty on such conductors for refusing to exhibit, or exhibiting false certificate,..... 847
- for false statement as to boat's loading,..... 847
- how penalties to be recovered,..... 848
- collector of tolls may require boat's loading to be weighed,..... 847
- proprietors of, to pay for detention of boat, if lading is found, on weighing, to conform to certificate,..... 847
- to prepare forms of certificates of lading, and furnish them to boatmen without expense,..... 847

## CAPE COD.

- land for lighthouses on, ceded to United States,.... 44
- land for preservation of harbor of, ceded to United States,..... 46

## CAPE POGE.

- land at, for lighthouses, ceded to United States,.... 44

## CAPITAL CASES.

- trial of, to be before supreme court by four justices,..... 553, 554
- prisoner in, may be arraigned by single judge,..... 553
- if he pleads guilty, single judge may award sentence,..... 553
- if he does not plead guilty, counsel to be assigned him, and measures taken for trial, by single judge,..... 553
- exceptions may be taken, and questions of law reserved in,..... 554
- if frivolous or intended for delay, court may forthwith enter judgment,..... 554
- after decision upon, judgment may be entered, and sentence passed, or preliminary proceedings had for new trial by single judge,..... 554
- arising in Duke's county to be tried in Barnstable county,..... 556
- other counties where no law term is established, special term to be held,..... 556
- when no law term is to be held within six months, court to be convened,..... 556
- provisions in regard to trial of,..... 841

## CARDS.

- jurisdiction of offences by means of, given to justices of the peace, &c.,..... 570, 609
- fraudulently obtaining property by, how punished,..... 802

## CARRIAGES, &amp;c.

- laws respecting meeting and passing of, on roads,..... 42
- rules for regulation of, may be made in cities,..... 157
- such regulations to be published,..... 157
- penalty for violation of rules,..... 157
- fee for license of,..... 157
- unlawfully taking and using, how punished,..... 801

## CARRIERS,

- embezzlement by, how punished,..... 800

## CASHIERS OF BANKS.

- exempt from serving as jurors,..... 680
- (See Banks, &c.)

## CASTLE ISLAND.

- ceded to United States,..... 44

## CAT ISLAND.

- East Rock of, ceded to United States,..... 44

CATTLE. (See *Neat Cattle, Beasts.*)

## CATTLE SHOWS.

- marshals at, appointment and powers and duties of,..... 57
- penalty for gaming at,..... 47
- booths, &c., used for gaming within one mile of, how removed,..... 64
- (See *Agricultural Societies.*)

## CAUSEWAYS.

- to be repaired by towns,..... 26
- damages caused by deficiency of, how recovered, &c.,..... 27

## CELLARS.

- occupied as dwellings, and unfit, how cleaned, &c., by order of board of health,..... 19

CEMETERIES. (See *Burial Grounds.*)

- provisions concerning,..... 136, 157
- jurisdiction of offences against property in, given to justices of the peace,..... 69

## CENSUS.

- provisions of constitution concerning,..... 34, 35, 36, 37
- of inhabitants, ratable polls, and voters, to be taken in 1866, and every tenth year afterwards,..... 157, 158
- Of inhabitants, to specify males and females, color, &c.,..... 158
- native, foreigners, naturalized voters, &c.,..... 158
- Of voters in cities, to specify number in each ward,..... 158
- by whom to be taken,..... 158
- persons taking to be sworn, and make return under oath,..... 158
- to deliver returns to sheriff or transmit to secretary,..... 158
- secretary to transmit blanks for returns of to cities and towns,..... 158
- Of United States, when to be taken,..... 158

## CERTIORARI.

- writs of, may be issued by supreme court,..... 557
- petitions for to be indorsed before entry when brought by parties living out of the state,..... 557
- indorser of, when may be required to enter,..... 557



**CERTIORARI** — *continued.*

subject to further regulation by rules of the court,.....	748
not to issue, unless applied for within six years, &c.,.....	748
pending application for, court may issue injunction as justice and equity require,....	748
costs on,.....	748, 781

**CHALLENGE.**

penalty for sending or accepting, to fight a duel,....	792
for posting for not accepting,.....	792
Of trial jurors, when not to be challenged on account of paying taxes, &c., in county, city, &c.,.....	618, 688
in criminal cases,.....	841
who may challenge, and for what cause,.....	841
in what cases peremptory challenges allowed, and how many,.....	841

**CHANGE OF NAME.**

how may be made by probate court,.....	548-574
--	---------

**CHAPLAIN.**

of senate and house of representatives, compensation of,.....	48
of state prison, appointment and duties of, &c.,.....	870-872

**CHARCOAL.**

burning of forbidden, on woodlands in portions of Bristol and Plymouth counties,.....	807
forfeitures therefor, how recovered,.....	807
form and dimensions of measures for,.....	279
such measures to be sealed,.....	279
penalty for selling, with illegal measures or unsealed,.....	279, 280
unless by special agreement between buyer and seller,.....	280
mayor and aldermen, &c., to appoint persons to seize illegal measures, &c.,.....	280
such persons may arrest parties without warrant,.....	280
illegal measures to be destroyed,.....	280

**CHARITABLE ASSOCIATIONS.**

seven or more persons to be body corporate for charitable purposes,.....	207
purpose and location to be specified in articles,....	207
to have usual corporate powers,.....	207
may hold real and personal property not exceeding one hundred thousand dollars,.....	207
estate not exempted from taxation where used for other purposes, &c.,.....	207

**CHARITABLE FUNDS.**

held by towns, trustees to report annually to selectmen concerning,.....	206
such trustees may be removed and vacancies filled by probate court,.....	206

**CHARLESTOWN.**

land for navy yard in, ceded to United States,.....	44
---	----

**CHARTERER.**

of vessel, when to be deemed owner for certain purposes,.....	289
---	-----

**CHARTERS.**

of corporations, revocable by legislature,.....	840
---	-----

**CHATHAM.**

land for lighthouses near harbor of, ceded to United States,.....	44
regulations concerning shell-fish in,.....	488

**CHEATS.**

gross, at common law, how punished,.....	802
--	-----

**CHECKS.**

what not to be issued or passed as currency,.....	807
---	-----

**CHELSEA.**

land in, for hospitals and depot of ordnance stores, ceded to United States,.....	44
---	----

**CHELSEA** — *continued.*

returns of votes in, for county commissioners and register of deeds, to whom made,.....	59
to vote with Middlesex county for county commissioners,.....	71, 72
commissioners for Middlesex to have jurisdiction in,.....	148, 242
not to be taxed for county purposes,.....	78
to have no interest in county property,.....	144

**CHEMIST.**

may keep intoxicating liquors, &c.,.....	442
aiding in coroner's inquest, compensation of.....	850

**CHESTNUTS.**

to be sold by the strike or level measure,.....	264
---	-----

**CHILDREN.**

attendance of, at school,.....	228-230
unlawfully excluded from schools, remedy of,.....	229
employed in manufacturing establishments instruction of,.....	229, 230
habitual truants, regulations, by-laws, &c., concerning,.....	228, 230
stubborn, how may be treated,.....	820, 821
destitute from neglect of intemperate parents, may be sent to almshouse,.....	892
of female convicts in certain cases, to be in care of mother,.....	861
not to gain settlement in town of birth, if parents have none there,.....	890
to inherit real estate from deceased parents,.....	474
deceased, issue of, to inherit by right of representation,.....	474
Legitimate, to follow and have settlement of father or mother,.....	890
Illegitimate, to follow and have settlement of mother,.....	890
to inherit from mother and maternal ancestors,.....	474
may be bound apprentices by mother,.....	549
mother of, heir to,.....	474
whose parents intermarry to be considered legitimate,.....	474
provisions respecting maintenance of,.....	404-406
Posthumous, to be considered living at death of parent,.....	475
having no provision made for them in father's will, &c., to share as if father died intestate,.....	479
devises to contribute equally to share of,.....	479

**ADOPTION.**

petition for adoption of, to be presented to probate court,.....	547
not to be granted, unless husband and wife join therein,.....	547
consent to be given by parents of,.....	547
how given, if parents are insane, imprisoned, &c.,.....	547
proceedings if parent does not consent,.....	547, 548
adoption not to be made without consent of child if fourteen years old,.....	548
proceedings and decree of,.....	548
relation, &c., between parents and child by,....	548
rights of natural parents taken away by,.....	548
appeal may be taken to supreme judicial court by party aggrieved,.....	548
any decree for may be reversed by supreme court in certain cases,.....	548
change of name of, in case of adoption,.....	547, 548

**CHIPPEQUIDDIC INDIANS.**

appropriations, &c., for schools for,.....	213
--	-----

**CHOCOLATE.**

how to be stamped,.....	280
-------------------------	-----

- CHOCOLATE**—*continued.*  
 ingredients of,..... 280  
 boxes, how branded,..... 280  
 may be seized, &c., when made contrary to law,.... 260
- CHRISTIAN TOWN INDIANS.**  
 appropriations, &c., for schools for,..... 218
- CHRISTMAS DAY.**  
 legislature not to sit, and public offices not to be opened on,..... 49  
 courts not to be opened on, except for certain purposes,..... 617, 618  
 bills of exchange, &c., maturing on, when payable,..... 268
- CHURCH WARDENS.**  
 if citizens of this commonwealth, a corporation to take grants, &c., to their churches,..... 206  
 when to be such corporation together with minister or vestry,..... 206  
 cannot convey church lands without consent of vestry,..... 206
- CHURCHES.**  
 connected with religious societies, &c., to have their accustomed privileges, &c.,..... 200  
 deacons, &c., of, to be bodies corporate to hold donations, &c.,..... 206  
 ministers of, together with deacons, &c., when to be corporation,..... 206  
 conveyance of lands of, by deacons, invalid unless with consent of church,..... 206  
 may, if not episcopal, choose committees to settle deacons' accounts,..... 206  
 amount of income of donations to, limited,..... 206  
 and furniture, penalty for wilful, &c., injury to,.... 808  
 (*See Parishes and Religious Societies.*)
- CIDER.**  
 deemed intoxicating liquor,..... 442  
 may be made and sold for other purposes than for a beverage,..... 442
- CITATION.**  
 how may be served,..... 151, 164  
 of executors, &c., to defend suit against deceased,..... 648
- CITIES.**  
 included in the word "towns,"..... 51  
 when may be chartered by legislature,..... 32  
 powers, &c., of, to continue,..... 166  
 laws relating to towns to apply to,..... 166  
 subject to liabilities of towns,..... 166  
 mayor and aldermen to have powers, &c., of selectmen,..... 166  
 vacancies in, by non-election, how filled,..... 166  
 if mayor is not elected, when chairman of aldermen to act,..... 166  
 when members of city council may hold other offices,..... 167  
 city councils may regulate balustrades, &c.,..... 167  
 to have powers of towns,..... 166  
 may require school committee to appoint superintendent of schools,..... 219  
 may make regulations concerning storage and sale of explosive substances,..... 460, 461  
 who to prosecute for fines, &c., enuring to,..... 167  
 no new division of wards, in certain cities, until next apportionment of representatives,..... 63, 167  
 boards of health in, how constituted,..... 188  
 ways in, provisions applying to laying out, repairing, &c.,..... 242, 248  
 liability of, for neglect of mayor and aldermen to place stone bounds at angles of streets, &c., in certain cases,..... 244  
 may make by-laws to prevent pasturing cattle in streets, &c.,..... 250
- CITIES**—*continued.*  
 actions by and against, in what counties to be brought,..... 61  
 how summoned, in actions against,..... 62, 63  
 special provisions respecting jurors in,..... 62  
 City officers, to have powers and liabilities of corresponding town officers, unless, &c.,..... 166  
 vacancies, how filled,..... 166  
 when not to be disqualified by removal from ward,..... 167  
 embezzlement by, how punished,..... 99  
 Ward officers, duties of, at elections,.... 58, 59, 65, 91, 166, 167  
 duties of, upon new division of wards,..... 166  
 tenure of office, upon new division of wards,..... 166  
 vacancies, how filled,..... 166  
 if absent, officers pro tempore may be elected,..... 167
- CIVIL LAW.**  
 degree of kindred computed according to,..... 64  
 proceedings in cases of seizure of forfeited goods to be according to course of,..... 73
- CLARKE'S POINT.**  
 land at, for lighthouse, ceded to United States,.... 41  
 for fortifications, ceded to United States,..... 45
- CLAIMANT.**  
 in cases of seizure of intoxicating liquors,..... 446, 447  
 in cases of seizing and libelling forfeited goods,..... 773, 774  
 in cases arising under the act respecting fugitives from service,..... 736
- CLAM BAIT.** (*See Fish.*)..... 34
- CLANDESTINE MARRIAGE.**  
 abduction of unmarried female for,..... 61
- CLERGYMEN.** (*See Ministers of the Gospel.*)
- CLERK OF HOUSE OF REPRESENTATIVES.** (*See Representatives.*)
- CLERK OF THE SENATE.** (*See Senate.*)
- CLERKS OF COURTS.**  
*OF THE SUPREME JUDICIAL COURT FOR COMMONWEALTH.*  
 Clerk of, to be appointed by court; and, until appointed, clerk of supreme court for Suffolk county to act,..... 612  
 may be removed from office by supreme judicial court,..... 613  
 general duties of,..... 612  
 fees of, to be like those of other clerks, except that they shall not exceed one dollar fifty cents in each case,..... 612  
 salary of, to be paid out of state treasury,..... 612  
 to pay over all fees annually to state treasury, exempt from serving as jurors,..... 612  
 Assistant clerks of, how appointed, and tenure of office,..... 612  
 general duties of, to be performed under direction of clerk,..... 612  
 salary of, to be paid from state treasury,..... 612  
 Clerk and assistant to give bond to state treasury, and be sworn,..... 612
- OF THE COURTS IN THE SEVERAL COUNTIES.*  
 legislature to prescribe for elections of, by general laws,..... 5  
 those now in office to continue to hold same,..... 5  
 in Suffolk, one to be elected for supreme court, and two, for superior court, one for civil, and one for criminal business,..... 5  
 in each of the other counties, one for all the courts and county commissioners,..... 5  
 how, in case of no choice,..... 5  
 return of votes for,..... 5  
 may be removed from office by supreme court,.... 5

CLERKS OF COURTS—*continued.*

vacancies in office of, how filled by election,.....	72
by appointment until an election,.....	612
to be sworn, and give bonds,.....	613
to be clerks of county commissioners,.....	612
exempt from service as jurors,.....	679
general duties of,.....	613
to keep alphabetical lists of parties to actions,.....	613
to exhibit to supreme court, each term, latest book of records,.....	613
records of, to be inspected by the judges, and, if found to be left incomplete for six months, bond to be adjudged forfeited,.....	613
when there is a forfeiture of bond, judges to notify treasurer having custody thereof, who shall cause the same to be sued,.....	613
when recovered, to be applied to making up record, and balance paid to treasurer,.....	613, 614
suit, in such case, not to exempt clerks from suit for any other breach of bonds, nor for any other liability,.....	613, 614
to keep an account of all fees, and render account annually to county treasurer,.....	614
to make annual return to secretary of commonwealth of moneys received by them, and of criminal cases, according to blanks furnished, under penalty,.....	129
duties of, in regard to organization, &c., of law library associations,.....	208
in regard to returns of votes for county commissioners,.....	60
to record estimates of county taxes, and transmit copies, &c., to secretary, under penalty,.....	146
to furnish certificates of abatements of taxes made by commissioners,.....	80
to retain certain portions of fees for their salaries, and one half balance, and pay over other half to county treasury,.....	614
when to issue venires for jurors in different cases,.....	630, 631, 632
to issue venires, and do other acts respecting special terms of supreme court for trial of capital cases,.....	555
to enter on docket time of receiving order for entry of judgment, in cases continued nisi,.....	557
to prepare copies and papers for supreme court, in cases entered for determination of full court,.....	557, 563
to enter thereon, and on docket, date of orders and decrees in equity cases,.....	560
to enter decrees in equity transmitted from other counties,.....	561
not to act in relation to naturalisation, except in cases prescribed,.....	613
to perform duties of clerks of courts, without additional compensation,.....	613
to note time of writs, and copies returned by officers attaching real estate, record the names of parties thereto, and receive fees therefor,.....	625, 626
may, when a justice of the peace, with one other justice, take depositions to perpetuate testimony,.....	676
may assess damages in suits upon contracts, when amount due is not disputed,.....	685
duty of, when sentence of death has been awarded,.....	847
when there has been a sentence to state prison,.....	846

CLERKS OF COURTS—*continued.*

to subjoin brief abstract of sheriff's returns to record of the conviction and sentence,....	847
duty of, where warrant for pardon in commutation of sentence is returned,.....	856
fees of,.....	784, 785
appeal from taxation of costs by,.....	782
how and when to be heard and determined,.....	782
Assistant clerks, to be also assistant clerks of county commissioners,.....	612
appointed in counties of Middlesex, Suffolk, and Worcester, to continue in office, and vacancies how filled,.....	612
shall be sworn before judge, and give bonds,....	613
to perform, under direction of clerk, such duties as are not performed by clerk, to whom he shall pay all fees,.....	614
to act as clerk, in case of vacancy in office,.....	614
Salaries of, and how paid,.....	614
Clerk pro tempore, how appointed, when, from sickness or other cause, the clerk is unable to discharge his duties,.....	613
record of fact to be made by clerk when he resumes his duties,.....	613
to be sworn, and give bonds,.....	613
when clerk is absent, how appointed,.....	613
to be sworn,.....	613
compensation of clerk pro tempore,.....	614

OF POLICE COURTS.

to be elected by certain cities and towns where courts are established,.....	569
may be removed from office by supreme judicial court,.....	553
vacancies in, how filled by election,.....	569
to be sworn, give bonds, and keep records,.....	569
may be appointed by judges of those courts for which the office of clerk is not established by law,.....	569
may appoint assistants, with approval of judge or court,.....	569
shall be responsible for, and may remove, their assistants,.....	569
justice to act when no clerk is appointed,.....	571
exempt from serving as jurors,.....	579
on death, absence, or removal of, clerk pro tempore to be appointed,.....	569
duties, compensation, and oath of clerks pro tempore,.....	569
to make certain returns to secretary of commonwealth respecting criminal cases,.....	129
not to be retained as counsel in cases pending or tried in their courts,.....	569
to sign writs and processes,.....	571
to make warrants, processes, tax costs, receive fees, fines, and costs, and make returns,.....	573
to indorse on copies, their fees,.....	572
to account for fees, fines, and costs quarterly,.....	573
to pay certain fines to cities and towns,.....	572
certain fees to parties entitled thereto on account therefor to county treasurer,.....	572
in Boston, to account with board of accounts, and pay to city treasurer,.....	573, 574
Salaries of,.....	572, 573

COAL. (*See Charcoal.*)

certain, to be sold by weight,.....	279
standard weight of ton to be two thousand pounds,.....	279
weighers of, to be appointed,.....	279
not to be engaged in business of selling coal,....	279
fees of,.....	279

**COAL—continued.**

- certificate of weight to be furnished to buyer,..... 279
- penalty for violation of these provisions,..... 279

**COAST SURVEY, by United States.**

- persons employed to make, may enter upon lands, and make erections, &c.,..... 45
- damages thus occasioned to be assessed by county commissioners,..... 46
- tender of, may be made, and effect of,..... 46
- commissioners to give notice to, and hear, all parties interested,..... 46
- to file report in office of clerk of courts,..... 46
- either party may have a trial by jury, on petition filed within thirty days after next term of court,..... 46
- costs in such cases,..... 46
- penalty for injuring, defacing, &c., any signal, monument, &c., erected for,..... 46
- CODICILS, included in the term "wills,"..... 52

**COCCULUS INDICUS.**

- fish not to be taken by use of,..... 481
- penalty for adulterating liquor with,..... 822

**COHABITATION.**

- lewd and lascivious, how punished,..... 818
- penalty for, after divorce,..... 588, 584

**COHASSET.**

- land in, ceded to United States,..... 45

**COIN.**

- provisions of United States constitution respecting,..... 4, 5
- may be taken on execution, and paid to creditor as money,..... 687
- may be attached,..... 624
- punishment for counterfeiting, &c.,..... 809

**COLLATERAL SECURITY.**

- when stock transferred as, debt to be specified in transfer and certificate,..... 885
- sale or disposal of, without authority, before the principal debt becomes due, how punished,..... 808
- penalty on consignee or factor for deposit or pledge of, with intent, &c.,..... 808
- how may be disposed of, by creditors of insolvent debtors,..... 584
- by pledgee, &c.,..... 767-770

**COLLECTORS.**

- of taxes may be chosen by towns,..... 164
- unless specially chosen, constables to be,..... 160
- vacancies in office of, how filled,..... 162
- may, by vote of town, have powers of treasurer in collecting taxes,..... 165
- to give bond,..... 164
- to collect taxes according to warrant,..... 81
- to complete collection, though term of office expires,..... 81
- to demand payment before distraining,..... 81
- may collect forthwith, if assessors so order,..... 81
- may collect, although error in name of person taxed,..... 82
- to keep lists of persons who have paid taxes, and to give receipt upon request,..... 56
- and deliver to selectmen, twice in each year, under penalty,..... 56
- duties of, to be expressed in warrant for collection,..... 79
- to make discounts, as directed,..... 79
- certificate to be exhibited to, by person claiming abatement,..... 81
- duties of, in collection of school taxes,..... 224
- to levy, by distress, &c., upon refusal to pay taxes,..... 82
- not to levy upon certain property,..... 82

**COLLECTORS—continued.**

- to keep distress four days, and within seven days sell by auction,..... 82
- to post notice forty-eight hours before sale,..... 82
- may adjourn sale once, not exceeding three days,..... 82
- to post notice of such adjournment,..... 82
- how to make seizure and sale of shares, &c., in corporations,..... 82
- to return surplus, upon demand, if distress exceeds taxes, &c.,..... 82
- may commit to prison person neglecting fourteen days after demand, if sufficient goods not found,..... 82
- and to deliver to jailer attested copy of warrant, with certificate of amount of tax, &c.,..... 82
- if person committed is unable to pay, may be discharged, as committed on execution,..... 82
- and notice to be given to collector or assessors,..... 82
- collector liable for tax, &c., unless person is committed within one year, &c., unless, &c.,..... 82, 82
- may demand aid, under penalty, if resisted in exercise of his office,..... 82
- may demand payment of persons removing from precinct, and distrain, &c., or issue warrant to sheriff therefor,..... 82
- may sue in his own name person removing, &c., after tax assessed,..... 82
- may sue executor, &c., for tax on personal estate of deceased person,..... 82
- may, after demand, distrain, within nine months, stock and produce, when estate taxed to occupant who is not owner,..... 82
- when demand, in such case, need not be made,..... 82
- may sell real estate for taxes fourteen days after demand,..... 82
- and after two years, if estate has not been alienated,..... 82
- to demand payment of resident mortgagee, before selling mortgaged real estate, in case, &c.,..... 82
- and to demand of attorney of non-resident owner or mortgagee, in case, &c.,..... 82, 84
- not to advertise sale until two months after such demand,..... 84
- affidavit of, to be evidence of demand,..... 84
- to advertise sale of real estate three weeks successively, in what newspaper, &c.,..... 84
- and state therein names of owners, amount of taxes, &c.,..... 84
- to give old and new name of town, where name changed within three years,..... 84
- to post notice in town similar to advertisement,..... 84
- to sell by auction as much of real estate, or rents and profits, as will pay taxes, &c.,..... 84
- and when whole lot is sold, to pay surplus to owner on demand,..... 84
- may adjourn sale from day to day, not exceeding seven days in whole,..... 84
- to give notice of such adjournments,..... 84
- to give deed to buyer,..... 84
- contents of deed,..... 84
- collector may sue mortgagee in possession of real estate, for taxes, &c., due,..... 84
- to give receipt to mortgagee for taxes paid,..... 84
- when treasurer is appointed collector, may issue warrant for collection to sheriff, &c.,..... 84

**COLLECTORS — continued.**

collector to exhibit accounts under penalty to selectmen, &c., every two months, if required, .....	86
to be credited with abatements, and amount of taxes of persons committed, &c., .....	86
how to supply deficiency, if without his own default, in state or county taxes, .....	86
liability of, if he neglects to pay state and county taxes, .....	87
if insane, unable to discharge duty, absconds, &c., selectmen may remove him, .....	87
if he dies before completing collection, selectmen may appoint temporary collector, .....	87
in case of death or removal of, executors, &c., to deliver to selectmen unsettled tax lists, .....	87
compensation of, .....	87
duties of, in collecting taxes in watch and fire districts, .....	175, 181
Of parishes, to be chosen at annual meeting, and sworn, .....	201
oath of, by whom administered, .....	201
to be sworn forthwith if present, if not present, to be notified, .....	202
if oath is not taken within seven days, society to make new choice, .....	202

**COLLEGES.**

officers of, exempt from serving as jurors, .....	680
to impress upon students principles of piety, temperance, &c., .....	216
students in, not to be credited by innkeepers, stable-keepers, &c., .....	457
professors of anatomy in, when to have for dissection body of person executed, .....	791

**COMMANDER-IN-CHIEF.**

governor to be, .....	23
general powers of, .....	23, 24
may order out militia in case of war, insurrection, &c., .....	92, 109, 110
power and duty of, as to organizing, disbanding, &c., military companies, .....	94, 96
aids of, .....	24, 96, 97
may arrange militia into divisions, brigades, &c., .....	94
to commission military officers, .....	24, 96
orders of, by whom distributed, .....	101
with advice of council, may sell certain military stores, .....	104
may detail an officer at any time to examine condition of armories, .....	104
may order out any portion of militia for escort, &c., .....	107
may reverse judgment of court martial, .....	119
may call boards of officers to settle military questions, .....	120

**COMMERCE.**

provisions of United States constitution concerning, .....	4, 5
--	------

**COMMISSARY-GENERAL.**

how appointed, .....	32
not to be member of legislature, .....	30

**COMMISSIONERS.**

compensation of those appointed by governor, .....	141
travelling expenses of, in certain cases, .....	141
To administer oaths to public officers, to be appointed by governor, .....	181
may administer oath of office to all public officers, except where different provision is made, .....	181, 182
To take depositions in other states, may be appointed by governor, .....	182
tenure of office, .....	182

**COMMISSIONERS — continued.**

how to be qualified, .....	182
to have official seal, .....	182
signature, oath, and impression of seal to be filed in secretary's office, .....	182
powers and duties of, .....	182
official acts to have same effect as if done by justice of peace in this state, .....	182
to be furnished by secretary with instructions and forms, .....	182
To take acknowledgment of deeds, &c., in foreign countries, may be appointed by governor, .....	182
how qualified, .....	182
signature, oath, and impression of seal to be filed in secretary's office, .....	182
powers and duties of, .....	182
effect of official acts the same as if done by authorized officer in this state, .....	182
On repairs, &c., of state house, who to be, .....	184
powers and duties of, .....	184
To commit girls to state industrial school, powers and duties of, .....	414
Of wrecks, appointment, powers, and duties of, .....	427-429
to make complaint for injury to property, &c., of Humane Society, .....	806
To receive claims against estates of deceased persons, .....	496-499
To examine convicts in state prison alleged to be insane, who to be, their duty, and compensation, .....	878
To determine upon improvements to meadows, swamps, marshes, &c., appointment, duties, and powers of, .....	751
compensation of, .....	751
shall make return of their doings, .....	751
may apportion expense of improvements, .....	751, 752
may open floodgates, &c., on lands of others, .....	752
may erect and maintain dams, .....	752
what notice to be given to owner of land, .....	752
damages therefor, how to be determined, .....	752
persons aggrieved may appeal, .....	752
proceedings on such appeal, .....	752
appeal by owner of land, after notice that commissioners intend to open floodgates, &c., on his land, .....	752
such appeal to suspend all proceedings, .....	752
To take bail, may admit to bail, .....	884
not in less sum than the amount ordered on commitment, .....	884
To defend fugitives from service, &c., .....	740, 741
Of circuit court of United States, to hold no judicial office under laws of this state except that of justice of the peace, .....	742
Respecting connecting railroads, to fix compensation for depot accommodations, &c., .....	894, 895
Bank, .....	800-802
Insurance, .....	820, 821
Pilot, .....	287

**COMMISSIONERS OF INSOLVENCY.**

when and how chosen, .....	38, 70
return of votes for, .....	59, 60
term of office, .....	71
number of, in each county, .....	71
in case of failure to elect, governor to order new election, .....	71
vacancies, how filled, .....	72, 153

**COMMISSIONERS OF INSOLVENCY — continued.**

to be sworn,.....	158
may be removed from office by supreme judicial court,.....	158
may finish insolvency cases commenced before them,.....	601
to return all papers in such cases to register of probate and insolvency,.....	601
removed from charge of insolvency cases, or dying, cases to be removed to court of insolvency,.....	601
may approve bail bonds,.....	642
take affidavits for, and authorize arrest of poor debtors on mesne process and execution,.....	638

**COMMISSIONS.**

tenure of office to be expressed in,.....	27
how to be signed, attested, and sealed,.....	30, 81
to take depositions, when and how to issue in criminal cases,.....	840

**COMMITMENT.**

of persons charged with bailable offences, failing to recognize as ordered,.....	881, 882, 888
of witnesses failing to recognize as ordered,.....	888

**COMMON AND NOTORIOUS THIEF.**

who to be deemed, and how punished,.....	798
--	-----

**COMMON LANDS, WHARVES, &c.**

suits against proprietors of, summons how served on them,.....	628
provisions respecting proprietors of,.....	879-884

**COMMON CARRIERS.**

railroads, &c., to publish lists of unclaimed effects of passengers,.....	426
articles so advertised to be examined by selectmen, &c.,.....	426-427
may be sold at auction by order of selectmen, &c.,.....	427
net proceeds of sale to be paid into state treasury,.....	427
penalty on, for neglect to advertise,.....	427
perishable articles transported by, may be sold without advertising, upon notice to owners, &c.,.....	427
net proceeds to be paid to owner or consignee,.....	427
when liable for loss of life of passengers,.....	794
to be punished by fine,.....	794
fine, how recovered, and to whom paid,.....	794
how punished for gross carelessness in the common carriage of passengers,.....	794

**COMMON DRUNKARDS.**

how arrested, secured, and punished,.....	820, 821
---	----------

**COMMON LEWD, WANTON, AND LASCIVIOUS.**

persons in speech or behavior, how punished,.....	820, 821
---	----------

**COMMON NIGHT WALKERS.**

how arrested, secured and punished,.....	820, 821
conviction of,.....	821
may be discharged or bound out, &c., upon reform, after conviction,.....	859, 860

**COMMON PILFERERS.**

how arrested, secured and punished,.....	820, 821
--	----------

**COMMON PIPERS AND FIDDLERS.**

how arrested and punished,.....	820, 821
---------------------------------	----------

**COMMON RAILERS AND BRAWLERS.**

how arrested and punished,.....	820, 821
---------------------------------	----------

**COMMON RECEIVERS.**

of stolen or embezzled goods, who to be deemed, and how punished,.....	801
--	-----

**COMMON SEWERS.**

provisions respecting laying out, &c.,.....	258-256
---	---------

**COMMON UTTERER.**

of forged and counterfeit bills, who to be deemed and how punished,.....	806
of counterfeit coin,.....	809, 810

**COMMON VICTUALLERS.**

provisions respecting,.....	455-457
-----------------------------	---------

**COMMON WAY.**

how construed,.....	51
---------------------	----

**COMMONWEALTH.**

territorial limits of, how far to extend from seashore,.....	43
sovereignty and jurisdiction,.....	43
jurisdiction of, concurrently with United States,.....	43
property of, except, &c., exempted from taxation,.....	74
banks, to loan money to,.....	309
treasurer, to give notice in writing to the president or cashier of amount required,.....	309
not entitled to demand of any bank loans exceeding one-tenth of its capital,.....	309
treasurer, to equalize the amount demanded among the several banks,.....	309
banks, to pay two per cent. per month for refusal, after thirty days,.....	310
treasurer, to institute an action to recover the penalty,.....	310
information of intrusion to recover lands against persons unlawfully entering or intruding upon, or holding same,.....	717-719
writs of entry, how brought for lands recovered by, upon information of intrusion, when parties are not concluded by judgment in such information,.....	718, 719
may purchase railroads after twenty years from opening,.....	870
suits by, for recovery of lands, to be barred after twenty years,.....	778
except as to province lands and back bay lands,.....	776
limitation of actions brought by or for benefit of,.....	779
costs in suits by, in its own behalf,.....	781
not to include travel of attorney-general or district-attorneys,.....	781
in behalf of a private person,.....	781
judgment for costs against, how to be paid,.....	781

**COMMUTATION OF PUNISHMENT.**

provisions respecting,.....	855, 856
-----------------------------	----------

**COMPLAINTS.**

for threatening to break the peace, how made,.....	827
when frivolous or malicious, complainant to pay costs,.....	828
that a criminal offence has been committed,.....	831
proceedings in such case,.....	831
to recover damages for flogging of lands,.....	563, 766, 769
what to contain, and proceedings thereon,.....	766, 769
not to abate by reason of death of any party,.....	769
nor be defeated by any errors of form,.....	769
new complaint may be brought, and when,.....	767
To supreme court, for non-entry of appeals and exception,.....	564, 565
for non-entry of probate appeals,.....	572
To superior court, for non-entry of appeals from justices of the peace and police courts,.....	67

**COMPOUNDING FELONIES, &c.**

how punished,.....	514
--------------------	-----

**CONCEALMENT.**

of property or of person, when caused for proceeding against a debtor as an insolvent,.....	804
of property, &c., by a debtor after petition for proceedings in insolvency is filed against him, how punished,.....	696, 807

**CONCEALMENT—continued.**

of effects and of insolvent debtors, persons suspected of, how examined,.....	597
by mother, of death of infant bastard, how punished,.....	818
of felonies, how punished,.....	814

**CONDITIONAL SENTENCE.**

in the case of common drunkards, night walkers, raiiers and brawlers, &c.,.....	820
how to be carried into execution, &c.,.....	820, 845

**CONDITIONAL PARDON.**

provisions respecting,.....	865, 866
-----------------------------	----------

**CONFECTIONERS.**

not to give credit to students under penalty,.....	457
--	-----

**CONFINEMENT.**

of persons forcibly, &c., without authority, how punished,.....	794
---	-----

**CONNECTICUT RIVER.**

provisions respecting floating timber, &c., in,.....	424
--	-----

**CONSIGNEE.**

of merchandise, when entitled to lien thereon for money, &c., advanced to shipper though not true owner,.....	294, 295
contracts or pledges by, concerning merchandise, &c., in his possession, to be binding,.....	295
lien of, for expenses and charges not affected by these provisions,.....	295
penalty on for fraudulently pledging consigned property,.....	803
or disposing of proceeds thereof,.....	803

**CONSTABLES.**

to be chosen by ballot at annual town meeting,.....	160, 161
if present, to forthwith accept or refuse the office,.....	161
to be sworn,.....	161
certain persons exempted from liability to serve as,.....	163
penalty for refusing to take oath and serve as,.....	163
in cities, may be removed for gross misconduct,.....	163
to collect taxes in certain cases,.....	79, 81, 83, 160
to serve process directed to them by county commissioners,.....	145
may serve civil process upon giving bond, &c.,.....	163, 164
and writs and criminal process where their town, &c., is interested,.....	164
may serve certain notices, &c.,.....	164
returns of service to be prima facie evidence,.....	164
time of filing bond to be noted by town clerk,.....	164
remedies on bond,.....	164
may require aid in execution of their duties,.....	164
to serve all warrants, &c., lawfully directed to them by selectmen,.....	164
to prosecute for violations of law respecting Lord's day, &c.,.....	164
may convey prisoners, &c., beyond limits of town,.....	164
may serve warrants in certain cases, beyond limits of town,.....	164
may serve process, in unincorporated place annexed to town,.....	164
to abate nuisance, &c., under direction of board of health,.....	190, 191
to inquire into, &c., violations of Lord's day,.....	434
in the execution of warrants in liquor cases, protected,.....	448
penalty on, for neglect to serve warrant in liquor cases,.....	448
exempt from serving as jurors,.....	679, 680
to serve processes legally directed to them, &c.,.....	618
shall not appear in court, &c., as attorneys and counsellors,.....	164, 616

**CONSTABLES—continued.**

nor make, nor fill up writs, declarations, or processes, under penalty,.....	616
nor buy, nor procure by certain means, claims for collection, &c., under penalty,.....	618
to serve venire and summon jurors,.....	681, 682
fees of, for official duties,.....	786
when not entitled to witness fees in criminal cases,.....	786
to make complaint for injury to property, &c., of Humane Society,.....	886
penalty on persons refusing to assist,.....	813
falsely assuming to be,.....	814
penalty on, for neglecting or failing to execute a warrant for summoning coroner's inquest,.....	848

**CONSTITUTION OF MASSACHUSETTS.**

to be published with acts and resolves,.....	50
analysis of,.....	11
preamble,.....	18

**DECLARATION OF RIGHTS.**

natural and essential rights of all men,.....	14
right and duty of public worship, and establishment of religious freedom,.....	14, 34
exclusive right of self-government, unless expressly delegated to United States,.....	14
magistrates and officers of government accountable to the people,.....	14
exclusive privileges only for services rendered to the public,.....	14
hereditary offices absurd and unnatural,.....	14
right of people to institute and change government,.....	15
rotation in office,.....	15
all elections ought to be free,.....	15
taxation to be by consent of the people or their representatives,.....	15, 16
remedies for injuries to be free, complete, and prompt,.....	15
rights of subject in prosecutions,.....	15
trial by jury,.....	15, 16
crimes to be proved in the vicinity where they happen,.....	15
warrant to make search or arrest to be supported by oath, and accompanied with a special designation of the object of search or arrest,.....	15, 16
warrant not to be issued, except as prescribed by law,.....	16
liberty of the press not to be restrained,.....	16
right to bear arms for the common defence,.....	16
military power subordinate to civil,.....	16
moral qualifications for office, moral obligations of lawgivers, &c.,.....	16
right of people to instruct representatives,.....	16
right of petition,.....	16
power to suspend and execute laws,.....	16
freedom of debate,.....	16
frequent sessions of the legislature to be had,.....	16
ex post facto laws prohibited,.....	16
no man to be declared guilty of treason or felony by legislature,.....	16
soldier not to be quartered in any house, in time of peace, without the owner's consent,.....	16
how so quartered in time of war,.....	16
no person to be subjected to law martial, except in the army, and navy, and militia in actual service, but by authority of the legislature,.....	16
Judges of the supreme judicial court to hold office	

CONSTITUTION OF MASS.—*continued.*

during good behavior, and have salaries established by standing laws,.....	17, 25, 27
opinions of, may be required by either branch of the legislature, and the governor and council,.....	27
separation of executive, judicial and legislative departments of the government,.....	17
"inhabitant" defined,.....	19
qualifications of voters,.....	19, 82, 88, 89
title of body politic,.....	17

## GENERAL COURT.

legislative department to consist of two branches, and styled the General Court of Massachusetts,.....	17
governor to approve bills and resolves, or return to legislature with objections,.....	17
how bills and resolves to become a law, if the governor objects,.....	17
if not returned within five days,.....	18, 82
courts may administer oath,.....	18
general court may constitute courts of record, &c., may make laws not repugnant to the constitution, provide for the appointment of officers, and prescribe their duties, impose taxes, &c.,.....	18
how adjourned, prorogued, and dissolved,.....	23, 88
valuation of estates to be taken once in ten years at least,.....	18
Senate, number of, and by whom elected, 18, 19, 85, 89	
first branch of the legislature,.....	19
districts for choice of,.....	81, 85, 89
votes for, by whom received, and return of,.....	19
by whom to be examined, &c.,.....	20
how summoned to take their seats,.....	20
to be final judge of election, &c., of its own members,.....	20
vacancies in, how filled,.....	20
qualifications of members of,.....	20, 85, 89
may adjourn not exceeding two days,.....	20
shall appoint its own officers and make its own rules of proceedings,.....	20
to try all impeachments made by house of representatives,.....	20, 21
to be specially sworn for trial of impeachments,.....	20
limitation of sentence by,.....	20
sixteen members a quorum,.....	21, 89
may punish for contempt,.....	22
cases where rights and privileges of, are concerned, how tried,.....	22
Representatives in general court, by whom, and when, chosen,.....	21, 84, 85, 86, 88
travelling expenses of, paid from state treasury,.....	21
qualifications of,.....	21, 85, 89
how far privileged from arrest,.....	22
number and apportionment of,.....	88, 89
House of representatives may impose fines on towns that neglect to return members,.....	21
the grand inquest of the commonwealth,.....	21
impeachments made by, and tried by senate,.....	20, 21
to originate all money bills,.....	21
may adjourn not exceeding two days,.....	21
one hundred members of, a quorum,.....	22, 89
judge of returns, elections, and qualifications of its members,.....	22
to choose speaker and appoint its own officers,.....	22

CONSTITUTION OF MASS.—*continued.*

to establish rules of proceedings,.....	21
may punish for contempt, &c.,.....	22
cases where rights and privileges of, are concerned, how tried,.....	22

## EXECUTIVE POWER.

Governor, style and title of,.....	21
to be chosen annually,.....	21, 34
qualifications of,.....	21, 22
oath of,.....	21, 23
when and how elected,.....	22, 23, 34, 35
return of votes for,.....	21, 23
to be commander-in-chief,.....	23
may convene council,.....	21, 25
pardonng power vested in, with advice of council,.....	24
judicial officers to be appointed by,.....	24
officers of the militia to be commissioned by,.....	24
money to issue from treasury only on warrant of, except, &c.,.....	24
salary of,.....	25
to be president of the council,.....	25
all public boards to make quarterly returns to,.....	25
Council for advising the governor,.....	21, 25, 26
members of, and how chosen,.....	25, 26, 27
rank of,.....	26
proceedings to be recorded, &c.,.....	26
to have full executive power, when office of governor and lieutenant-governor are vacant,.....	26
Lieutenant-governor, title of,.....	26
to be chosen annually,.....	25, 34
qualifications of,.....	25
oath of,.....	25, 26
when and how elected,.....	25, 34, 35
in absence of governor, to be president of council,.....	26
to be member of council, except, &c.,.....	26
when to be acting governor,.....	25, 26
Secretary of commonwealth, how chosen,.....	27
records of the commonwealth to be kept in office of,.....	27
may appoint deputies,.....	27
to attend the governor and legislature when required,.....	27
vacancy in office of, how filled,.....	27, 28
Treasurer and receiver-general, how chosen,.....	27
vacancy in office of, how filled,.....	27, 28
limitation of office,.....	27
Judicial officers, tenure of office to be expressed in commissions,.....	27
may be removed by governor and council, upon address of legislature,.....	27
Harvard college, powers, rights, and privileges of, confirmed,.....	27
gifts, grants, &c., to be held according to intent of donors,.....	27
overseers of,.....	27
alteration of government of, may be made by general court,.....	27
encouragement of literature, &c.,.....	28, 29, 30

## OATHS AND SUBSCRIPTIONS, INCOMPATIBILITY OF OFFICE.

WRITS, ENACTING STYLE, &c., COMMISSIONS, &c.	
oath of office,.....	28, 29
affirmation allowed,.....	29
tests abolished,.....	29
incompatibility of offices,.....	28, 29
bribery, person convicted of, not to hold office of trust or importance,.....	29



CONSTITUTION OF MASS. — *continued.*

money, sums of, how computed,.....	30
commissions, how to be signed, attested, and sealed,.....	30, 31
writs, issuing out of the clerk's office, how to be signed, sealed, and bear teste,.....	31
habeas corpus, writ of, benefit of, secured, &c.,.....	31
continuation of former laws, except, &c.,.....	31
enacting style of statutes,.....	31
constitution to be enrolled on parchment, and published,.....	31
city charters, when may be granted by legislature,.....	32
notaries public, appointment, removal, and tenure of office,.....	32
military officers, how commissioned and removed,.....	24, 32
amendments to constitution, how made,.....	33
political year, commencement and termination of,...	33
religious freedom established,.....	34
plurality of votes by the people to elect civil officers,.....	36
election of state officers, time of,.....	36
school money not to be applied to sectarian schools,.....	38
sheriffs, registers of probate, commissioners of insolvency, and clerks of courts, how chosen,.....	38
census of legal voters and inhabitants, when to be taken,.....	34, 35, 38, 39

CONSTITUTION OF THE UNITED STATES.

preamble, purposes of,.....	2
legislative powers granted by, to vest in congress,.....	2
to be the supreme law of the land,.....	3
powers not delegated nor prohibited to remain in states,.....	9
ratification and mode of amendment of,.....	3
articles of amendment of,.....	9

CONGRESS.

to consist of senate and house of representatives,.....	2
shall assemble at least once a year, and where,.....	3, 6
each house shall be the judge of the election, &c., of its own members,.....	3
majority of each house to constitute a quorum,....	3
smaller number may adjourn from day to day,.....	3
may compel attendance of absent members,.....	3
may make rules, punish or expel members,.....	3
shall keep journal, and publish the same, except, &c.,.....	3
years and days may be called by one fifth present,.....	3
when either house, during the session, may adjourn, and to what place,.....	3
place, &c., of election of senators and representatives to be prescribed by state legislatures,.....	3
such regulations, except place of choosing senators, may be altered by congress,.....	3
powers specifically granted to,.....	4, 5, 6, 7, 8
may make laws to carry out such powers,.....	4
what congress cannot do,.....	5, 9
may fix time of choosing electors of president and vice president,.....	6
day to be the same throughout the United States,.....	6
may provide who shall act as president, in case of the inability of president and vice president,.....	6

CONSTITUTION OF U. S. — *continued.*

may vest appointment of inferior officers as they think proper, &c.,.....	6
may declare the punishment of treason,.....	7
attainder not to work corruption of blood or forfeiture, except, &c.,.....	7
may prescribe how proof shall be made of acts, &c., of states,.....	7
may assent to formation of new from old states,....	8
may make needful regulations for property and territory of the United States,.....	8
when may prepare amendments to the constitution,.....	8
shall be bound by oath to support the constitution,.....	8
powers not granted reserved to states,.....	9
Members.	
compensation of,.....	3
privileged from arrest, except, &c.,.....	3
not to be questioned elsewhere for words spoken in debate,.....	3
not to be appointed to certain civil offices,.....	3
persons holding office under the United States not to be members,.....	3

HOUSE OF REPRESENTATIVES.

members of, how and by whom chosen,.....	2, 3
qualifications, apportionment, and number,....	2
vacancies in, how filled,.....	2
shall choose their officers,.....	2
shall have sole power of impeachment,.....	2
shall judge of the elections, &c., of own members,.....	3
quorum, adjournments, rules, journals, &c.,....	3, 6
compensation, privileges, disqualifications,....	3, 5
cannot be appointed a presidential elector,.....	5
to originate all revenue bills,.....	3
two thirds of, may pass bill over president's veto,.....	4
shall be bound by oath to support the constitution,.....	3

SENATE.

members, how chosen and classified,.....	2
qualifications, quorum, adjournments, rules, journals, compensation, privileges, disqualifications,.....	3, 5, 6
cannot be electors of president or vice president,.....	5
vacancies, how filled,.....	2
vice president to preside over, but not to vote, unless, &c.,.....	3
president pro tempore, when to be chosen,....	3
has sole power to try impeachments,.....	3
proceedings in cases of impeachment,.....	3
may propose, &c., amendments to money bills,.....	3
two thirds of, may pass a bill over president's veto,.....	4
may concur in making treaties,.....	6
may advise and consent to appointments by president,.....	6

PRESIDENT.

his term of office,.....	5
electors of, number, and how appointed,.....	5, 6
who cannot be,.....	5
how and where to meet, and choice of president,.....	5, 9, 10
qualifications of president,.....	6
provisions in case of vacancy in office of,.....	6
compensation and oath of,.....	6
powers and duties of,.....	4, 6, 7

CONSTITUTION OF U. S. — *continued.*

may veto bills, .....	4
proceedings in case of impeachment of, .....	3, 7
president cannot pardon in cases of impeachment, .....	6
VICE PRESIDENT.	
mode of election, qualifications, &c., .....	5, 6, 9, 10
to be president of the senate, .....	3
but to have no vote, except, &c., .....	8
when to be president, .....	6
JUDICIAL POWER.	
how vested, .....	7
to what cases it extends, .....	7, 9
to what cases it does not extend, .....	9
tenure of office of judges, and their pay, .....	7
original and appellate jurisdiction, .....	7
trial of crimes, where to be held, and by jury, ..	7
Judicial proceedings, &c., in each state, to have full credit in other states, .....	7
STATES.	
individual, each to have a republican form of government, .....	8
to be protected against foreign invasion and domestic violence, .....	8
cannot be sued, .....	9
powers not delegated, nor prohibited, remain to, prohibited from the exercise of certain powers, .....	5
privileges and immunities of citizens of, .....	7
full faith and credit to be given to acts, &c., of, .....	7
admission of new states, provisions respecting, .....	8
members of legislatures of, to be bound by oath, &c., to support the federal constitution, .....	8
judges in, to be bound by federal constitution and laws, &c., .....	8
MISCELLANEOUS PROVISIONS.	
Adjournment of congress or either house, .....	3
Amendments, how to be made, .....	8
articles of, .....	9, 10
Arms, right to keep and bear, not to be infringed, .....	9
Army, congress has power to raise and support, .....	4
Arrest, members of congress privileged from, .....	3
Attainder, no bill of, to be passed, .....	5
of treason not to work corruption of blood, except, &c., .....	7
Bail, excessive, prohibited, .....	9
Bankruptcy, congress may establish system of, .....	4
Census, United States, when to be taken, .....	2
Citizens of states, privileges and immunities of, .....	9
Coin and coining, provisions respecting, .....	4, 5
Commerce, congress may regulate, .....	4, 5
Copyright, congress may grant by law, .....	4
Counterfeiting, congress may punish, .....	4
Crimes, where and how to be tried, .....	7, 9
persons not to be held to answer for, unless, those charged with, to have trial by jury, &c., ..	9
Debts, contracted before the adoption of the constitution, to be valid against the United States, .....	8
Duties, authority of congress to establish, .....	4, 5
Excessive bail, fines, and punishments, prohibited, .....	9
Ex post facto laws not to be passed, .....	5

CONSTITUTION OF U. S. — *continued.*

Fines, excessive, prohibited, .....	9
Freedom of speech and press and of petition secured, .....	9
Fugitives from justice, provisions respecting, .....	7, 8
from service and labor, .....	7, 8
Grand jury, presentments and indictments by, .....	9
Habeas corpus, writ of, not to be suspended, unless, &c., .....	5
Immigration of certain persons, provisions respecting, .....	5
Impeachment under federal constitution, .....	2
house of representatives has sole power of, .....	2
senate has sole power to try, .....	3
proceedings in trials of, .....	3, 7
when president is tried, .....	3
judgment and sentence in cases of, .....	3
those convicted still liable to indictment, .....	3
president cannot pardon in cases of, .....	6
Importation of certain persons, provisions respecting, .....	5
Jury, trial by, secured to those charged with crimes, .....	9
in suits at common law, when, &c., .....	9
Measures and weights, standard may be fixed, .....	4
Militia, provisions respecting the arming and disciplining of, .....	4, 9
Money may be coined, and value regulated, .....	4
counterfeiting of, may be punished, .....	4
Naturalization, uniform rule of, may be established, .....	4
Nobility, titles of, not to be granted, .....	5
Navy, power of congress over, .....	4
Officers not to accept presents, titles, &c., .....	5
Petition, right of, secured, .....	9
Post offices and roads may be established, .....	4
Presents, &c., officers not to receive, .....	5
Press, freedom of, secured, .....	9
Private property not to be taken for public use without, &c., .....	9
Punishments, excessive, prohibited, .....	9
Quorum of senate and house of representatives, .....	3
of senate for choice of vice president, .....	10
of the house of representatives for the election of president, .....	10
Ratification of constitution and of amendments, .....	9
Religious establishment prohibited, .....	9
Revenue, power of congress to raise, .....	3, 4, 5
Searches and seizures, freedom from unreasonable, .....	9
Speech, freedom and right of, secured, .....	9
Soldiers not to be quartered in any house without consent of the owner, .....	9
Taxes, direct, how to be apportioned, .....	2, 4, 5
Tender, only gold and silver coin to be made a legal, .....	5
Treason, how defined and punished, .....	7
person not to be convicted of, unless, &c., .....	7
attainder of, not to work forfeiture, &c., .....	7
Treasury, money how to be drawn from, .....	5
Treaties, how may be made, .....	6
to be the supreme law of the land, .....	6
individual states not to make, .....	5
Trial by jury secured in trials for crimes, .....	9
in suits at common law, .....	9
Veto of president, .....	4
two thirds of both houses may pass bill over, .....	4
Warrants not to issue, except, &c., .....	9

CONSTITUTION OF U. S. — *continued.*

Weights and measures, standard of, may be established,.....	4
Witness, person charged with crime may summon,.....	9
may be confronted with those against him,.....	9
no one compelled to be against himself,.....	9
Yea and nay, when to be entered on journal,.....	8
AMENDMENTS.	
how made and ratified,.....	8
articles of, when made and ratified,.....	9, 10
religious establishment prohibited,.....	9
freedom of speech and of the press, and right of petition, secured,.....	9
right of people to keep and bear arms not to be infringed,.....	9
soldiers not to be quartered in any house, unless, &c.,.....	9
security from unreasonable searches and seizures,.....	9
warrants not to issue but on probable cause, &c.,.....	9
persons not to be held to answer for crimes, unless, &c.,.....	9
to have trial by jury; to be confronted with witnesses; to compel the attendance of witnesses, and to have counsel,.....	9
not twice to be put in jeopardy,.....	9
not be compelled, in a criminal case, to be a witness against himself,.....	9
nor be deprived of property but by process of law,.....	9
private property not to be taken for public use without just compensation,.....	9
trial by jury secured in suits at common law, when amount in controversy is over twenty dollars,.....	9
excessive bail, fines, and punishments prohibited,.....	9
rule of construction as to powers granted,.....	9
powers not delegated nor prohibited to remain to the states,.....	9
judicial power does not extend to suits against a state,.....	9
manner of choosing president and vice president,.....	9, 10
CONSUL.	
of United States, in a foreign country, when may take acknowledgment of deeds,.....	467
may solemnize marriages,.....	581
CONTEMPT.	
magistrate, neglecting or refusing to return recognizances, &c., to court, may be proceeded against by attachment,.....	886
in refusing to serve, &c., habeas corpus, how punished,.....	738
punishment for by governor and council, senate, and house of representatives,.....	22
courts martial,.....	119
county commissioners,.....	145
by justices of the peace and police courts,.....	610
by judges of probate courts in like manner as by superior court,.....	577
of courts of insolvency,.....	581
when witnesses fail to appear before any court, justice, referee, master in chancery, &c., on being summoned,.....	678
CONTESTED ELECTIONS.	
committed to certify necessity of attendance of witnesses in,.....	787

CONTINGENT REMAINDER.

when may be sold, &c., subject to contingency,.....	472, 478
CONTINUANCE.	
of actions, may be made by agreement of parties,.....	600
may be ordered to enable absent parties to defend, or either party to set off judgment or execution,.....	648
may be made by any other justice, when the justice before whom a case is returnable, &c., fails to attend,.....	606
of petitions and writs of partition to enable absent persons interested to appear,.....	699, 700
court may impose costs as condition of allowing,....	782
CONTRACT.	
what, not valid unless in writing,.....	527, 528
by spendthrifts,.....	544
on gaming consideration,.....	436
on consideration of liquor illegally sold,.....	448
for sale of certain stocks void, unless vendor is owner,.....	528
may be made by married women in relation to their separate property,.....	538
between parties before marriage, how made, &c.,....	541
when may be made by towns,.....	158
on account of state prison, how to be made,.....	878
suits thereon,.....	878, 874
no officer to be interested therein,.....	874
to be executed on Sunday and public holidays, when performable,.....	293
made by or with aqueduct corporation, to remain in force after its dissolution,.....	875
liability of shareholders in such case,.....	375
Action of, substitute for actions of assumpsit, covenant, and debts, except for penalties,.....	658
forms of declaring in,.....	653-655, 663-665
not to be joined with actions of tort, but a count in contract and count in tort for same cause of action may in certain cases be joined,.....	654
cases in equity may be commenced by,.....	559
Specific performance of written, may be enforced in equity by supreme court,.....	559
for conveyance of real estate made in writing by a person subsequently put under guardianship or deceased, how enforced by probate court, &c.,.....	575
Written, how declared on in suits,.....	654
persons severally liable on, may be joined in same action,.....	654
CONTRIBUTION.	
by heirs and legatees, &c., when property is taken, &c., to pay debts of deceased, &c.,.....	479, 508
by posthumous child in like case,.....	479
by heirs, &c., for payment of taxes on real estate of deceased persons,.....	75
proceedings in cases for,.....	480
between officers and stockholders liable for debts of corporation, &c.,.....	886
by persons summoned in trustee process who pay more than their proportion of costs,.....	728
Suits for, may be brought in supreme court in equity,.....	559
between heirs, devisees or legatees liable for debts of deceased, or other persons liable for same debt,.....	559
where two or more parties have distinct rights which cannot be adjusted at law,.....	559

**CONUSEE AND CONUSOR.**

- in recognizances for debts, provisions concern-  
ing,.....770, 772  
(*See Recognizances for Debt.*)

**CONVEYANCE OF PUBLIC LANDS.**

- to be subject to approval of governor and coun-  
cil,.....56, 139

**CONVEYANCE OF REAL ESTATE.**

- provisions respecting,.....465-467  
how made by towns,.....158  
by counties,.....144  
by corporations,.....385  
by married women,.....588  
incumbrances in case of, to be made known to  
grantee,.....467  
when incumbrance exists, liability of grantor,.....467  
(*See Deed.*)  
penalty for making of encumbered real estate with-  
out disclosing incumbrance,.....802  
of attached real estate, without notice,.....802, 803

**CONVICTIONS.**

- of persons indicted, what necessary to,.....790  
to precede punishment,.....790  
of part, and acquittal of part of offence, effect of,....842

**CONVICTS.**

- provisions for classifying, &c.,.....858, 862  
In the state prison, provisions respecting,  
870-875  
Insane, provisions concerning,.....878  
Poor, discharge of, provisions concerning,.....878

**COPARTNERSHIPS.**

- suits in equity between copartners may be brought  
in supreme court, and receivers ap-  
pointed,.....559  
emblemment by clerks and servants of,.....800  
except by apprentices and persons under six-  
teen years,.....800  
(*See Partnerships.*)

**COPYRIGHT.**

- congress may grant by law,.....4

**CORN.** (*See Grain.*)

- regulations respecting weight and sale of,.....265  
punishment for cutting down, &c., any kind of,....806

**CORONERS.**

- appointed by the governor,.....24  
to be sworn and give bond,.....152  
bonds to be examined annually, by superior  
court, and new ones required if insuffi-  
cient,.....152  
sureties on, how discharged,.....152  
penalty for neglect to give,.....152  
suits on, how brought, &c.,.....152  
to serve processes legally directed to them, &c.,.....618  
directed to them by county commissioners,....145  
when sheriff is interested,.....152  
may serve process when their town is a party,....152  
to perform duties of sheriff, when sheriff's office is  
vacant,.....152  
not to act as attorney, &c.,.....151, 153, 616  
not to advise suit, &c., under penalty,....151, 153, 616  
nor buy, nor procure by certain means, claims for  
collection, &c., under penalty,.....618  
may require aid in execution of official duty, in crim-  
inal and certain other cases,.....151, 153  
exempt from serving as jurors,.....679  
jurors before, not subject to provisions respecting  
other jurors,.....684  
fees for official duties,.....786  
when not entitled to witness fees in criminal  
cases,.....786  
refusing to assist, how punished,.....818  
falsely assuming to be, how punished,.....814

**CORPORATION, SOLE.**

- limitation of entry, by survivor after dissolution  
of,.....713

**CORPORATIONS.**

- petitioners to general court, for alteration of charter,  
to publish notice thereof,.....47, 49  
not to be taxed for parochial purposes,.....302  
moneyed, shares in, taxable,.....71  
funds of, for support of schools, to be held as hereto-  
fore,.....217  
bonds, &c., of, negotiable,.....23  
real estate, and machinery of, to be taxed in school  
districts where situated,....23  
seizure and sale of shares in, for non-payment of  
taxes, how made,.....82  
general powers of, when other special provision is  
not made,.....364  
time of organization of, limited to two years from  
passage of charter,.....364  
first meeting of, how to be called,.....361, 365  
notice of first meeting of religious societies, may  
be affixed to the door, or some other  
conspicuous part of their meeting-  
house,.....365  
when meetings may be called by a justice, &c., what  
may be done at such meetings,.....365  
at such meetings shall elect officers to fill vacancies,  
and act upon other business as at regular  
meeting,.....365  
may by their by-laws, &c., determine manner of  
calling meetings, &c.,.....365  
may annex penalties to by-laws, &c.,.....365  
may convey lands,.....365  
shares in not to be issued at less than par value, un-  
less by special authority,.....365  
list of stockholders in, to be kept by officer and ex-  
hibited upon written application to any  
stockholder,.....365  
penalty on officer of, refusing to exhibit list of stock-  
holders,.....365  
executor, &c., may vote as stockholder,.....365  
records of transfers of stock, to be made and kept in  
the state, &c.,.....365  
in transfers of stock as collateral security, debt in-  
tended to be secured, to be described in  
deed of transfer,.....365  
certificate of stock issued to pledgee, or holder of  
such collateral security, to express on the  
face of it, that the same is so held, and  
name of pledgee, &c.,.....365  
records of transfers, to be exhibited upon written re-  
quest of creditor, under penalty,....365, 366  
foreign corporations having property in this state  
liable to be sued, &c.,.....366  
service of writ, how to be made,.....366  
for manufacturing, mechanical, mining, or quar-  
rying business, &c., stockholders in, in-  
dividually liable, for debts to operatives,  
&c.,.....366  
suit in equity in supreme court may be maintained  
against officers, &c., when liable,.....366  
executors, &c., not personally liable as stockholders,  
but estates liable, &c.,.....366  
to publish in newspapers once in five years, list of  
unclaimed dividends and balances,.....366  
certain, to register names, &c., of stockholders,  
and not to issue certificate until pur-  
chaser informs of his place of residence,  
&c.,.....366  
to make return to assessors, of names of stock-  
holders, number of shares belonging to  
each, &c.,.....366

CORPORATIONS — *continued.*

banks and insurance companies to make like returns to assessors, &c.,	887
penalty on for neglect, or making false returns,....	887
shareholders in, penalty on, for fraudulent transfer of shares to avoid taxation,.....	887
warrants of distress may issue against, for damages assessed by county commissioners or jury, &c.,.....	887
franchisee of a turnpike or other corporation, authorized to receive toll, may be attached, &c.,.....	887
officer to leave copy of process, &c., with the clerk, treasurer, or some one of the directors, &c.,.....	887
franchise, &c., may be sold on execution,.....	887
mode of sale, &c.,.....	887
sale may be adjourned, &c.,.....	887
who to be deemed the highest bidder at such sale,.....	888
officer's return on execution or warrant of distress to transfer to purchaser rights, &c., of corporation so far as relates to right of demanding toll,.....	888
officer immediately after sale to deliver to purchaser possession of tollhouses, &c.,.....	888
purchaser of franchise, &c., to have same remedies as corporation, &c.,.....	888
liabilities of corporation to continue after sale of franchise,.....	888
franchise may be redeemed by corporation at any time within three months, &c.,.....	888
all proceedings respecting attachments, &c., may be had in county in which president, treasurer, clerk, &c., reside,.....	888
may be dissolved by supreme judicial court, on petition of majority of members, in number or interest,.....	888
so dissolved, to be deemed extinct,.....	888
to continue three years after charter expires, to close their concerns,.....	888
but not for the business for which they were established,.....	888
when charter expires, or is annulled, or the corporation is dissolved, the supreme judicial court, on petition, &c., at any time within three years may appoint receivers, &c.,.....	888, 889
powers of such receivers to continue as long as the court deems necessary,.....	889
the court to have equity jurisdiction, &c.,.....	889
receivers to pay debts and distribute surplus,.....	889
corporations now existing, provisions concerning,.....	889
every act of incorporation passed after March 11, 1831, to be subject to amendment, &c.,....	889
actions, by and against, in what counties to be brought,.....	621
how summoned in suits against,.....	628
when parties to suits, how officers of may be interrogated by opposite party,.....	659
agents and officers of, may, upon being authorized, sign and make oaths to all precepts, answers, &c., required in suits at law,.....	668
when execution against, has been satisfied by levy on property of stockholders, and the property or damages have been recovered back, how new execution may be obtained,.....	686
may be summoned in trustee process,.....	721

CORPORATIONS — *continued.*

how may appear, answer, and be examined in trustee process,.....	722
shares in, how attached, taken on execution, and sold,.....	627, 687, 689, 690
recording officer of, to give certificate of shares held by debtor, upon officer exhibiting a writ on execution,.....	627, 689
dividends of, made after attachment of shares, held thereby,.....	627, 690
when entitled to costs for travel how to be computed,.....	788
fraudulent over issue of stock in, how punished,.....	801
fraudulent issuing, or transferring, or signing certificates of stock, with intent,.....	801
false entries in books of, of transfer of stock,.....	802
omitting to make true entry of transfer,.....	802
on trial of such case, book to be evidence,.....	802
when indicted and served with process, failing to appear, may be defaulted,.....	847
in such cases the charge to be taken to be true, and judgment to be rendered,.....	847
warrant of distress may issue for the penalty and costs,.....	847

## IN INSOLVENCY.

proceedings by, how commenced,.....	598
against for not dissolving attachments, and other causes,.....	599
warrant to contain order requiring messenger to state that corporation is forbidden to make contracts,.....	598
claims may be proved at any time before making final dividend,.....	598
officers of, to furnish schedules and do other acts, in like manner as debtor,.....	598
sale of franchisees of such as are authorized to take tolls and proceedings thereafter,.....	598, 599
damages against, for land and materials taken, preferred claims,.....	599
discharges not to be granted to officers or members of,.....	599
mortgages by, not invalidated by insolvency proceedings,.....	599, 600
foreclosed pending proceedings and before choice of assignee, may be redeemed by assignee within sixty days,.....	599
proceedings to be generally like those in case of insolvent debtors,.....	598

## CORPORATIONS ORGANIZED UNDER GENERAL STATUTES.

1. COMPANIES FOR CUTTING AND SELLING ICE, OR FOR MECHANICAL, MINING, QUARRYING, AND MANUFACTURING PURPOSES.	
three or more persons may become such corporation,.....	841
not to carry on business of distilling or manufacturing intoxicating liquors,.....	841
to remain a corporation under any name, &c., not previously in use by other corporation, &c.,.....	841
purpose for, and place within which established, to be specified in articles of association,.....	841
not to direct its operations, or appropriate its funds, to any other purpose,.....	841
first meeting to be called by notice of one or more persons named in agreement,.....	841
such notice to state time, place, and purposes of meeting,.....	841

CORPORATIONS, &c. — *continued.*

- copy of notice to be given to each member seven days at least before meeting, or published in some newspaper, &c., ..... 841
- organisation, and all proceedings, &c., may be confirmed, &c., ..... 841
- to what provisions liable, ..... 842
- secretary of the commonwealth to prepare, and cause to be printed, annual abstracts, for legislature, ..... 842, 848
- Officers, how chosen, ..... 838, 842
- liability of, ..... 842
- liability of, how may be limited, ..... 842
- Capital stock of, how fixed, increased, and diminished, ..... 842
- not to be less than five thousand, nor more than five hundred thousand, dollars, ..... 842
- no share to be issued for less than par value, ..... 842
- certificate of, &c., to be made, published, &c., before commencing business, ..... 842
- when increased or reduced, certificate to be made, &c., ..... 842
- Stockholders, if doubts arise whether corporation is legally organized, &c., may by vote confirm organisation, &c., ..... 841
- by so doing, and depositing copy of vote with clerk of town, &c., and with secretary, such corporation to be held legal, &c., ..... 841
- before commencing business, certificate of name, and purpose of association, &c., to be published, and copy filed with city or town clerk and secretary, ..... 842
- similar certificate to be made, &c., when capital stock and shares are increased or diminished, ..... 842
- certificate of capital, when paid in, to be made, signed, &c., by president, treasurer, &c., and recorded in registry of deeds, ..... 838, 842
- to be made and recorded when stock is increased or diminished, ..... 838, 842
- organised for manufacture of cotton or woollen goods, may manufacture certain other goods, ..... 840, 841, 848
- these provisions may be amended or repealed by legislature, ..... 848

## 2. GASLIGHT COMPANIES.

- how organized, powers of, &c., ..... 848
- (*See Gaslight Companies.*)

## 3. BANKS.

- how organized, and provisions respecting, ..... 818-816
- (*See Banks.*)

## COSTS.

## IN CIVIL CASES.

- prevailing party entitled to, except, &c., ..... 780
- In personal actions commenced in the supreme judicial court or superior court, except replevin, ..... 780
- when plaintiff recovers only twenty dollars, ..... 780
- when plaintiff's claim is reduced by set-off, ..... 781
- in actions which might have been joined, ..... 781
- where there are several counts for distinct causes of action, and verdicts for plaintiff on some, and defendant on others, ..... 781
- of former suit to be paid, or proceedings to be stayed, or dismissed, ..... 781
- In actions at law in the supreme judicial court, ..... 781
- when plaintiff does not recover three hundred dollars, ..... 781

COSTS — *continued.*

- when defendant brings money into court in satisfaction of the damages, ..... 781
- of copies, when cases are reported, or appeals or exceptions taken to be entered in supreme court, how paid and taxed, ..... 563
- on plea of non-tenure, disclaimer, &c., allowed only after plea filed, ..... 658
- executors and administrators, when and how liable for, ..... 648, 651, 652
- paid by executors and administrators, when may be allowed in their accounts, ..... 651
- in cases before police courts, how taxed and paid, ..... 572
- may be awarded, and execution therefor issued by probate court, ..... 578
- defendant not entitled to, when discharged solely by insolvency, ..... 780
- is entitled to, when issue joined upon discharge is found for, ..... 780
- on proceedings to assess damages by United States coast survey, ..... 46
- accrued before an abatement of taxes is made, to be paid by applicant for abatement, ..... 79
- recognisances for, in applications for laying out, &c., highways, &c., ..... 222, 241
- in trials by jury of questions of damages, &c., in laying out highways, &c., ..... 225, 241
- how paid, in such cases, ..... 227, 229
- questions of, in such cases, to be determined by supreme court, ..... 227
- on petitions for alimony, ..... 536
- in real actions, full costs recoverable, ..... 781
- in complaints for flogage, ..... 758-759
- in actions of contract to recover damages awarded by jury in cases of flogage, plaintiff to recover full, though verdict does not amount to twenty dollars, ..... 781
- in writs of quo warranto, ..... 744
- on certiorari, at discretion of court, ..... 743
- provisions as to payments of, on scire facias, when bail surrender their principal, ..... 826
- when bail cannot surrender their principal, by act of God, &c., ..... 826
- in proceedings to enforce liens, ..... 768, 769, 770
- for travel, not to be taxed in suits on forfeited recognisance, ..... 826
- commonwealth to have in certain cases, on petition for review of judgment on forfeited recognisance, ..... 836
- in replevin, full costs recoverable, ..... 781
- in petition and suits for partition, ..... 700, 708, 704
- in suits for redemption and foreclosure of mortgages, ..... 712, 714
- in cases of information for intrusion, ..... 719
- in trustee process, ..... 727, 729
- on appeal from justices of the peace, or police court, ..... 74
- if plaintiff appeals and fails to recover more than in the court below, ..... 79
- on petitions for certiorari, mandamus, quo warranto, &c., ..... 78
- in suits in equity, for discovery only, and not for a decree, ..... 751
- and in such suits where a decree is prayed for, if court deems the prayer frivolous, or a pretence, &c., ..... 78
- in equity suits and civil proceedings, where no express provision is made, ..... 78
- to be wholly in the discretion of the court, ..... 78
- but not greater than for similar charges at common law, ..... 78

**COSTS — continued.**

in civil suits by the commonwealth, in its own behalf,.....	782
in such suits in behalf of a private person,.....	782
judgment for costs against the commonwealth, how to be paid,.....	782
how to be taxed for the commonwealth,.....	782
travel not to be allowed the attorney-general or district-attorney,.....	782
power and discretion of arbitrators and referees not hereby limited,.....	782
nor of any court to impose or refuse costs as the condition of an amendment, continuance, &c.,.....	782
How to be taxed, and items of taxation,.....	782
full, double and treble, when and how to be taxed,.....	777, 780, 781, 788
notice of taxation, when to be given to adverse party,.....	782
notice to the attorney equivalent to notice to the principal,.....	782
appeal from the taxation of costs,.....	782
how conducted,.....	782
judgment in such cases when to be considered as rendered,.....	782
when appeal is by person who is to pay the costs, the other party may have execution before the appeal is settled, by giving bond, &c.,.....	782
costs of the appeal,.....	782
how may be collected,.....	782, 783
attorney's fee in supreme judicial court or superior court when issue is joined,.....	783
in all other cases,.....	783
declaration in each writ in any court,.....	783
term fee in supreme judicial court or superior court,.....	783
only one where defendant is defaulted without appearing,.....	783
attendance before justice of the peace or police court,.....	783
for three days only allowed in cases of default,.....	783
nor after the day the case is finally disposed of for the term,.....	783
such day to be entered on the docket,.....	783
travel, in any court or before a justice of the peace,.....	783
not to be allowed for more than eighty miles out and home,.....	783
unless more than forty miles is actually travelled,.....	783
allowed to corporations, when they are entitled to costs,.....	783
to be computed from its principal place of business,.....	783
not to be allowed to commonwealth for any attorney for commonwealth,.....	782
In insolvency cases, contested before supreme or superior court, or court of insolvency, may be awarded to either party,.....	600
execution for such costs may be issued,.....	600
Before courts of insolvency, costs of court, messenger, &c., amount of, and how allowed and paid,.....	600
costs of attachment, how preferred,.....	596, 600
(See Fees.)	

**IN CRIMINAL CASES.**

two thirds of, to be paid by state, and one third by county,....	851
--	-----

**COSTS — continued.**

to include grand, and traverse jurors' fees,.....	851
how taxed before justices of the peace,.....	851
on complaints for sureties of the peace,.....	828
where warrant is served, where it is not served,.....	851
where justices of the peace exercise final jurisdiction,.....	851
taxation to be revised in superior court,.....	851
when person so sentenced pays his fine and costs, the justice may retain his own fees, and pay the residue to persons entitled,.....	851
otherwise to county, city, or town,.....	851
how may be certified,.....	851
how taxed in supreme judicial court or superior court,.....	851
to be taxed by prosecuting officer, and certified by the clerk,.....	851, 852
duty of clerk as to transmitting bills of costs,.....	852
to make statement to state treasurer as to fines, &c.,.....	852
sheriff alone, or deputy, or jailer, authorized to receive,.....	852
must pay to county treasurer in thirty days, without deduction,.....	852
remedy against sheriff for neglect,.....	852
permitting an escape of person under sentence for, makes the sheriff liable for costs,.....	852
county treasurer to transmit sworn accounts of costs twice each year to the state auditor,.....	852
form of accounts; penalty for neglect,.....	852
certificate of clerk of court to be sufficient voucher for all sales taxed for costs, or allowed to prosecutors,.....	851
accounts to be audited by auditor,.....	852
balance found due, to be paid to or by county treasurer,.....	852
to transmit annually to governor and council a general account of moneys received for costs, &c.,.....	853
and statements of sums due for costs to or from any person,.....	853
to pay over to persons entitled, if demanded within three years,.....	853
penalty for neglect,.....	853
discharge of poor convicts for non-payment of,.....	878, 879
in cases of seizing and libelling forfeited goods,.....	773, 774
of magistrates in criminal cases may be disallowed in certain cases, by district-attorney, with approval of the court,.....	788
witnesses in criminal trials attending in two or more cases, to have their fees apportioned,.....	788
when not to have any fees allowed,.....	788

**COUNCIL.**

for advising the governor,.....	23, 26, 36
may be convened by governor,.....	23, 26
governor to be president of,.....	25
lieutenant-governor to be member of, except, &c.,.....	25
number, and when and how chosen,.....	26, 33, 37, 62
return of votes for,.....	59, 60
rank of members of,.....	26
vacancies when and how filled,.....	37
proceedings to be recorded, &c.,.....	20
to have full executive power, when offices of	

COUNCIL—*continued.*

governor and lieutenant-governor are vacant,.....	28
members of, exempt from serving as jurors,.....	680
oath of members of,.....	29, 33
certain officers not to be members of,.....	30, 33
qualifications of members of,.....	37
compensation of members of,.....	128
two members of, may administer oaths of office to public officers,.....	181, 182
governor and, may punish for contempt,.....	22
districts for choice of members of,.....	62
committee of, to examine books and accounts of auditor,.....	136

## COUNSEL.

may be assigned by one judge, to prisoner indicted for a capital offence,.....	553
persons accused, entitled to,.....	9, 15, 790
not more than two, for a party to a suit, without leave of court,.....	615

## COUNSELLORS AT LAW.

and attorneys at law, distinction of, abolished,.....	615
( <i>See Attorneys.</i> )	

## COUNTERFEITING.

Congress may punish,.....	4
private labels, stamps, and trade marks, how punished,.....	802
selling goods, knowingly, with such marks, and not disclosing,.....	802
public records, &c., with intent to defraud,.....	807
knowingly uttering counterfeit instruments,.....	807
notes of state treasurer, &c.,.....	808
bank bills, &c.,.....	808
having in possession with intent, &c., ten or more counterfeit bank bills, &c.,.....	808
knowingly uttering counterfeit bills,.....	808
effect of second conviction for, and three convictions at same term,.....	808
bringing into state or having in possession counterfeit bills, &c., with intent to pass,.....	808
engraving plates, &c., or making paper for counterfeiting bills, &c.,.....	808
having such plates, &c., or paper, &c., in possession,.....	809
in prosecutions for counterfeiting, &c., bank bills, when testimony of president and cashier may be dispensed with,.....	809
how bank bills may be shown to be counterfeit,.....	809
for counterfeiting, &c., United States securities, &c., how securities may be shown to be counterfeit,.....	809
intent to defraud, how may be alleged and proved,.....	809
Gold and silver coin, how punished,.....	809
having in possession with intent, &c., two or more pieces of false coin,.....	809
any number of pieces less than ten,.....	809
effect of second conviction, or of three convictions at same term,.....	809, 810
making, mending, or knowingly having in possession moulds or tools for counterfeiting coin with intent, &c.,.....	810
Sheriff to seize counterfeit bank bills, plates, tools, &c., and court shall order them to be destroyed,.....	811
Recompense to prosecutors of counterfeiters and counterfeiting,.....	811

## COUNTS.

what may be joined,.....	654
costs, where some are found for plaintiff and some for the defendant,.....	781

## COUNTIES.

boundaries, rights, duties, powers, privileges, &c., to remain as now established,.....	144
bordering on sea, boundaries of,.....	43
offences committed within one hundred rods of boundary lines may be tried in either county,.....	328
separated by waters within the state, to have concurrent jurisdiction over such waters,.....	43
to continue bodies politic for certain purposes,.....	144
property formerly conveyed to, to be held as county property,.....	144
in Suffolk, to belong to Boston,.....	144
lands of, how may be conveyed,.....	144
to provide court houses, jails, &c., except in Suffolk,.....	144
to provide fire proof offices, &c.,.....	144, 148
special provision for Dukes county,.....	144
maps of, to be corrected from time to time by county commissioners,.....	144
of Suffolk and Middlesex, to have common jurisdiction over part of Charles River,.....	144, 145
Suffolk, to have concurrent criminal jurisdiction with other counties, over certain islands and waters,.....	145
accounts, receipts, and expenditures of, to be allowed and settled by county commissioners,.....	145
Taxes, estimate of, to be made by county commissioners,.....	145, 146
and to be apportioned by them according to the last state valuation,.....	145
and transmitted to secretary, &c.,.....	145
account of receipts and expenditures to be published annually,.....	145
Debts, commissioners may renew, &c., and contract new at the rate of thirty dollars for each one thousand inhabitants,.....	146
damage to county property, by whom prosecuted,.....	149
liability of, for neglect of commissioners to fix permanent bounds at angles of highways, &c.,.....	244
actions by and against, where to be brought,.....	621
how summoned, in suits against,.....	622, 623

## COUNTY COMMISSIONERS.

when and how chosen, and term of office,.....	70, 71
number in each county,.....	71
but one, to be chosen from same town, &c., except in Dukes county,.....	71
to furnish blanks for return of votes for county commissioners, county treasurer, &c.,.....	147
returns of votes for, to be transmitted to clerk of courts,.....	147
to be delivered by clerk to board of examiners, and be by them examined, &c.,.....	147
In case of failure to elect, examiners to issue warrant for new election,.....	147
vacancies, how filled,.....	147
to be sworn,.....	147
exempt from serving as jurors,.....	147
clerks and assistants, of courts, to be clerks of,.....	147
to choose chairman by ballot,.....	147
times and places for meetings of,.....	147
to examine returns of votes for county treasurer and register of deeds, and notify persons elected,.....	147
and to issue warrant for new election, if failure of election,.....	147
proceedings by, for assessment of damages occasioned by coast survey,.....	147



COUNTY COMMISSIONERS — *continued.*

to appoint suitable persons to assess state, &c., taxes, if assessors neglect,.....	77
power of, to abate taxes,.....	79, 80
their clerk to furnish certificate of abatements made by them,.....	80
to provide fire proof offices, &c.,.....	144, 198
to cause county maps to be corrected from time to time,.....	144
proceedings, when either is interested, &c.,.....	145
contested cases to be determined by three disinterested commissioners,.....	145
special provision for Dukes county in such cases,.....	145
witnesses before, how summoned and compelled to testify,.....	672, 673
may administer oaths to witnesses and punish for contempt,.....	145, 673
to provide for erecting and repairing county buildings,.....	145
to have care of county property, and to represent county,.....	145
to examine and allow accounts of county treasurer,.....	145
to allow and settle accounts of county receipts and expenditures,.....	145
to make estimate of county taxes,.....	145, 146
such estimates to be recorded by clerk,.....	146
and with statement of borrowed money, &c., and treasurer's account, to be transmitted to secretary,.....	146
penalty for neglect,.....	146
to apportion taxes according to last state valuation,.....	146
to publish annually account of county receipts and expenditures, &c.,.....	146
may renew county debts, &c., and restricted as to amount of new debts to be contracted,.....	146
may require recognisances for costs, &c., of persons, &c., applying for assessment of damages, &c.,.....	146
may add costs to damages assessed,.....	146
may receive, &c., certain petitions at other times than at regular meetings,.....	146
petitions so received, to be returned at regular or special meeting,.....	147
costs of special meeting how paid,.....	147
costs for attendance of, when petition is disallowed,.....	147
laws applying to commissioners and their clerks, to include all persons acting as such,.....	148
to appoint county treasurer in case of vacancy,.....	149
accounts of, to be examined by board of examiners,.....	149
sheriff to attend meetings of, when ordered by board,.....	152
may remove registers of deeds for incapacity, &c., except in Suffolk,.....	153, 154
may impose fine on towns for neglecting to choose selectmen or assessors,.....	161
may appoint assessors of taxes, in case towns neglect to choose, &c.,.....	161
may appoint enginemen for private engines, if selectmen, &c., refuse,.....	177
duties of, in regard to law library associations,.....	208
duties of, in relation to damages for land taken for schoolhouses,.....	220
powers and duties of, in laying out, &c., highways,.....	232-239
powers of in laying out, &c., town ways and private ways, in certain cases,.....	240

COUNTY COMMISSIONERS — *continued.*

in keeping in repair ways and bridges,.....	245
in regard to damages occasioned by repairs in highways,.....	247
as to ferries, &c.,.....	252
to cause permanent bounds to be erected at angles, &c., of highways laid out by them,.....	244
may make by-laws concerning fast driving over county bridges,.....	250
may license auctioneers, if selectmen, &c., refuse,.....	280
may authorize persons to make and sell spirituous, &c., liquors, for exportation, &c.,.....	439
to put in suit bond of manufacturers of liquors, upon breach thereof,.....	440
may grant licenses to innholders, &c., upon certificate of selectmen,.....	455, 456
clerks of, to transmit to selectmen lists of persons licensed the preceding year,.....	456
powers of, if selectmen refuse to grant such certificate,.....	456
not required to grant licenses,.....	457
to charge no fee for license,.....	457
to furnish summary of laws relating to licenses, to persons licensed,.....	457
may lay out turnpikes as highways,.....	346
to apportion damages,.....	346
proceedings if town refuses to pay,.....	346
powers and duties of, when turnpike is out of repair,.....	346, 347
powers, &c., of, in assessment, &c., of damages for land taken for railroad, &c.,.....	352, 353, 354
as to removal of turnpike gates,.....	344
to order railroad corporations to construct embankments, culverts, fences, &c.,.....	356
powers, &c., of, in relation to crossings by railroads over highways, &c.,.....	356, 357
in the regulation of dams,.....	769
may authorize laying out of highways across railroads,.....	357
to give notice, hear parties, &c., in such cases,.....	357
not to permit highway to cross at grade, unless public necessity requires,.....	367
to have original jurisdiction of all questions touching obstructions to highways, &c., by railroads,.....	358
powers, &c., of, in relation to sign-boards and gates at railroad crossings, &c.,.....	350, 361, 362
duties of, in assessing damages, &c., by aqueduct corporations,.....	376
on petition for constructing roads, &c., to swamps, &c.,.....	752, 753
exempt from serving as jurors,.....	679
processes of, to be served by officers, to whom they are legally directed,.....	610
proceedings of, to be recorded by clerk of the courts,.....	610
records of, to be in custody of the clerk,.....	610
awards of, to bear interest,.....	635
applications to, may be made by executor, administrator, heir, or devisee, of person dying before making same,.....	650
to audit coroners' accounts for inquests, except in Suffolk,.....	850
to appoint overseers of houses of correction,.....	858
may remove them, and fill vacancies,.....	858
may establish rules and regulations for houses of correction,.....	858, 859
shall provide materials for work of prisoners in,.....	858, 859

COUNTY COMMISSIONERS—*continued.*

may employ prisoners on public lands,.....	859
shall establish fixed salaries for officers, &c., of houses of correction,.....	860
may furnish instruction in reading and writing to prisoners, for one hour each evening, ex- cept Sundays,.....	863
shall procure necessary supplies, except in Suffolk, for jails, &c.,.....	864
may advance money from county treasury for pur- chase of tools, &c.,.....	865
shall allow reasonably for fuel, bedding, clothing, &c.,.....	865
may direct specific rations to prisoners,.....	866
may sue, in name of county, to recover for support of convicts,.....	866, 866
and for penalty on jailers for neglecting to keep prison book, &c.,.....	866
shall be inspectors of prisons, except in Suf- folk,.....	866
powers and duties of, in this capacity,.....	866, 867
compensation of,.....	147, 149
Special commissioners, how and when chosen, and term of office,.....	70, 71
number of in each county,.....	71
proceedings in case of failure to elect,.....	71, 72
vacancies, how filled,.....	72
to act when commissioners are interested, &c.,.....	145
exempt from serving as jurors,.....	680
compensation of,.....	147
In Nantucket, selectmen to act as,.....	148
In Suffolk, aldermen of Boston to act as,.....	148
In Chelsea, North Chelsea, and Winthrop, com- missioners of Middlesex to have jurisdic- tion,.....	148

## COUNTY OFFICERS.

embezzlement by, to be deemed larceny, and how punished,.....	800
--	-----

## COUNTY TREASURERS.

except in Suffolk and Nantucket, how and when chosen, and term of office,.....	70, 71
to be resident in county,.....	71
not to hold certain other offices,.....	149
return of votes for,.....	50, 60, 61
proceedings in case of failure to elect,.....	72
vacancies, how filled,.....	72, 149
to be sworn and give bond,.....	148
to be furnished with office by county,.....	148
salaries of,.....	148, 149
may recover of town, county taxes not as- sessed,.....	77
to publish annually account of county receipts and expenditures,.....	146
to pay over money as commissioners direct,.....	149
to account with commissioners at close of each year,.....	146, 149
penalty for neglect,.....	149
may sue on bonds, &c., given to county, &c., and prosecute for injury to county prop- erty,.....	149
may prosecute for trespasses on building owned jointly by a town and county,.....	168
to give notice to district attorney if public officer fails to pay over money, &c.,.....	149
to pay certain money from treasury to law library associations,.....	208
duties of, in regard to standard weights, measures, and balances,.....	284, 285
bond to, from register and assistant register of pro- bate and insolvency,.....	602, 608
bond to, from clerk and assistant clerk of courts, ...	618
to be sued by, in case of forfeiture,.....	618

COUNTY TREASURERS—*continued.*

sums recovered on, how appropriated,.....	618
returns and payments to, from justices of the peace and police courts,.....	571, 572, 610
from clerks of the courts,.....	614
may commence suit on contracts, &c., made with his predecessors, and prosecute suits com- menced by them,.....	630
to transmit twice a year sworn account to auditor, of costs, &c., in criminal prosecutions,.....	632
form of account,.....	632
penalty for neglect,.....	632
certificate of clerk of court to be sufficient voucher for all sums taxed for costs, or allowed to prosecutors,.....	632
such account to be audited, and balance, if any, paid,.....	632
to transmit annually to governor and council a gen- eral account, &c.,.....	632, 633
shall pay over to persons entitled the costs due them,.....	633
To pay out of treasury expenses incident to courts,.....	57
certain expenses of police courts,.....	571
and of probate courts,.....	571
In Suffolk, treasurer of Boston to be,.....	149
In Nantucket, town treasurer to be,.....	149

## COUNTY WAY.

how construed,.....	51
---------------------	----

## COURTS.

general court may constitute,.....	18
may administer oaths,.....	18
may make requisitions for militia in case of riot, &c.,.....	110
first day of term, how designated,.....	567, 617
appointed to be held at a time and place which, by reason of calamity, is unusable, judge may order same to be held at another time and place,.....	617
such order, how made, and notice given,.....	617
not to be opened on Sundays and holidays, except for special purposes,.....	617, 618
processes of, to be served by sheriffs, deputy sheriffs, coroners and constables, when legally directed to them,.....	618
may be adjourned by any officer on order of judge,.....	618
may be adjourned from one shire town to another, in certain cases,.....	568
matters common to supreme and superior court, .....	565-568
Courts of insolvency,.....	561
(See <i>Insolvency.</i> )	
Justices court for county of Suffolk, jurisdiction of, transferred to police court of Bos- ton,.....	56
Police courts,.....	56
(See <i>Police Courts.</i> )	
Probate courts,.....	574
(See <i>Probate Courts.</i> )	
Supreme judicial court,.....	53
(See <i>Supreme Judicial Court.</i> )	
equity jurisdiction of,.....	53
(See <i>Equity.</i> )	
Superior court,.....	52
(See <i>Superior Court.</i> )	
Martial and inquiry,.....	11-13
(See <i>Militia.</i> )	

## COURTS OF RECORD.

Judgments and decrees of, suits on, limited to twenty years,.....	77
presumed to be paid after lapse of twenty years,.....	77

**COVENANT.**

- action of abolished, and action of contract substituted for, ..... 658
- forms of declaring on, ..... 658, 664, 664
- against incumbrances, measure of damages in actions on, when incumbrance appears by the records, ..... 467

**COW.**

- one exempt from levy on execution and from attachment, ..... 624, 688

**CRACKERS.**

- penalty for selling and firing, &c., without license, ..... 460

**CRANBERRIES.**

- to be sold by the strike or level measure, ..... 264

**CRANBERRY MEADOWS.**

- willful and malicious injury to, how punished, ..... 906

**CREDITORS.**

- of persons deceased intestate, when entitled to administration, ..... 488
- of persons deceased insolvent, how to proceed, ..... 497-499
- how to proceed against executors, &c., ..... 491-498
- how to proceed against heirs, legatees, &c., ..... 507, 508
- trusts created for benefit of, how terminated, ..... 502
- bills in equity by, to reach property which cannot be come at to be attached, how brought, ..... 559
- proceedings and rights of, &c., respecting insolvent debtors, ..... 583-600
- when and how may commit debtors on meane process and execution, ..... 639-641

**CREDITORS' BILL.**

- equity jurisdiction in case of, ..... 559

**CRIMINAL OFFENCES.**

- duties of to be performed by clerks of courts, sheriffs, or their deputies, without additional compensation, ..... 618

**CRIME.**

- statistics of, provisions for obtaining, ..... 129
- not to exclude from being witnesses, except to wills, ..... 673, 674
- conviction of, may be shown to affect credibility of witnesses, ..... 678
- against nature, how punished, ..... 819

**CRIMINAL OFFENCES.**

- insane persons charged with and in prison, provisions concerning, ..... 838
- in prosecutions for under by-laws, ordinances, and the like, ..... 838
- jurisdiction over when committed on boundary of two counties or within 100 rods of dividing line, to be in either county, ..... 838

**CRIMINAL OFFENCES — continued.**

- when on the sea and within one league of shore, to be in adjacent county, ..... 838
- where mortal injury, &c., is inflicted in one county, and death ensues therefrom in another county, ..... 838
- where mortal injury, &c., is inflicted on the high seas, or on the land, within or without the limits of the state, and death ensues therefrom in the state, ..... 838, 839
- prosecutions for murder may be found at any period, ..... 839
- other within six years, ..... 839
- time of absence from the state, to form no part of six years, ..... 839
- process for arrest to issue forthwith after indictment found for a capital offence, ..... 839
- further proceedings in such cases, ..... 839
- prosecutions for, not to affect civil remedies for same matter, ..... 840

**CRIMINAL PROSECUTIONS.**

- when may be stayed, on reparation to party injured, ..... 834, 839
- certain defects of form, not to invalidate, ..... 842
- limitations of, ..... 839

**CROSS ACTIONS.**

- against plaintiffs out of state, how brought, &c., ..... 645, 646

**CROSSINGS. (See Railroads.)**

**CRUELTY.**

- to apprentices and servants, how redressed, ..... 550
- of husband or wife, when cause of divorce, ..... 582
- to horses, oxen, and other animals, how punished, ... 822

**CURRENCY.**

- passing any bills, notes, &c., as, except, &c., how punished, ..... 810
- any bills, notes, &c., as, for less than five dollars, except, &c., ..... 810
- fractional bills, ..... 810

**CURSING AND SWEARING.**

- profane, how punished, ..... 819
- prosecutions for to be commenced in twenty days, ..... 819

**CURTESY.**

- tenant by, who to be, ..... 471
- to hold lands during his life, ..... 471
- title of, not affected by advancements, ..... 475
- tenants by, how liable for waste, ..... 708, 709, 710
- tenancy by, how to affect limitation of real actions, in certain cases, ..... 775
- not affected by wife's right to hold property to her sole use, ..... 538, 539

**CUSTOM HOUSE OFFICERS.**

- exempted from military duty, ..... 92
- exempted from serving as jurors, ..... 690

**D.**

**DAMAGES.**

- on default, may be assessed by court, or on motion of either party, by jury, ..... 685
- assessment of, may be referred in all cases by court to jury, ..... 685
- in actions of replevin, ..... 732
- may be assessed by clerk on contracts where amount due is not disputed, ..... 685
- in actions on bonds, covenants, and agreements, with penalty, how determined, ..... 685, 686

**DAMAGES — continued.**

- in writs of entry, may be recovered for rents and profits, and for destruction or waste of the buildings or other property by tenant, ..... 698
- how recovered, in a writ of dower, for detention of dower, ..... 697
- subsequently, for rents and profits of a prior tenant on whom demand of dower was made, ..... 697

**DAMAGES — continued.**

for waste, against tenants in dower, by the curtesy, for years, and for life,.....	708-710
against joint tenants, tenants in common, &c., for waste,.....	709
against persons who commit waste after action brought concerning lands,.....	709
for wilful trespass,.....	709
for casual and involuntary trespass, and how amends may be tendered,.....	709, 710
for injury done by beasts of other persons,.....	185, 780
in actions of tort for acts of deceased, commenced or prosecuted by executors or administrators, to be only for value of property, or actual injury,.....	661
for wrongs or injuries, not to be deducted in settling amount due from trustee in trustee process,.....	724
measure of, not changed by statutes relating to pleading and practice,.....	682
in complaints for flowage, how estimated,.....	756
for what time to be allowed,.....	756
what to be allowed by way of set-off,.....	756
jury to determine what sum shall be paid annually,.....	756
and what sum to be paid in gross,.....	756
owner may elect which to pay,.....	756
within what time election to be made,.....	756
to be a lien on mill and appurtenances,.....	756
annual compensation may be assessed anew,.....	757
gross damages assessed only once in ten years,.....	757

**DAMS. (See Mills.)**

may be erected and maintained on streams not navigable,.....	754
not to be erected, or raised, to damage of existing mill,.....	754
height of, to be regulated by jury,.....	756, 756
damages for flowage, proceedings to recover,.....	756-757
material change in, to be deemed a new mill or dam,.....	757
provisions concerning the regulation of,.....	759
county commissioners to view and examine, after notice to adverse party, on application by persons owning property liable to be destroyed by breaking of,.....	759
if not sufficiently strong, commissioners may require them to be made secure,.....	759
directions to owner to make repairs, &c., to be in writing,.....	759
result of examination to be recorded,.....	759
record to be evidence, if owner had opportunity to be heard before commissioners,.....	759
if owner neglects or refuses to make repairs, &c., commissioners to cause dam, or parts thereof, to be removed,.....	759
after removal, no structure to be erected except as commissioners direct,.....	759
if dam cannot be removed without danger, the commissioners shall make it safe,.....	759
if commissioners require no alteration, &c., costs of application to be paid by petitioner, otherwise by owner,.....	759
in all cases to be paid by owner if he is petitioner,.....	759
supreme court has jurisdiction in equity to compel owner to make alterations, &c.,.....	760
penalty for wilful, &c., injury to,.....	804

**DAMS — continued.**

penalty for raising water by, so as to injure mill,.....	804
not to apply where court may abate,.....	804
<b>DARTMOUTH.</b>	
penalty for taking certain fish in waters of, by persons living out of state, &c.,.....	421
<b>DEACONS.</b>	
of churches, if citizens of the United States, a corporation to take, &c., grants to their churches,.....	216
when to be corporation for such purpose, together with minister,.....	216
cannot convey church lands without consent of church, &c.,.....	216

**DEAD BODIES.**

may be furnished to physicians, &c., by overseers of poor, &c.,.....	156
physicians to give bond in such case, &c.,.....	156
remains to be decently buried,.....	156
when not to be delivered to physicians, &c.,.....	156
not to be taken on meane process or execution,.....	821
penalty for so taking,.....	821
unauthorised removal or disinterment of, how punished,.....	821
accessories thereto, how punished,.....	821
buying, or selling, or having in possession to sell, how punished,.....	821
inquest on certain, to be held,.....	845, 849, 850
expense of bringing to land, when found in any waters of the state, how paid,.....	850
except for services in searching for,.....	850
money, &c., found upon, to be kept in charge by the coroner,.....	850
of strangers, expense of burial, &c., how borne,.....	850
of others, how borne,.....	850

**DEATH.**

of parties to actions, petition for partition, &c., ( <i>see Surviving of Actions</i> ),.....	645-650
of insolvent debtors, after proceedings commenced by or against them, not to affect same,.....	353
of justices of peace, after rendering judgment in civil actions, proceedings thereon,.....	67
of officers or party after commencement of levy of execution, effect of,.....	480
sentence of, how to be executed,.....	647

**DEATHS.**

city and town clerks to record and index facts concerning,.....	168
form of record,.....	169
to be reported by parents, householders, shipmasters, &c., to clerk, under penalty,.....	169
return to be made by clerk to secretary, under penalty,.....	170
physician to certify certain facts concerning, when requested, under penalty,.....	170
sextons, &c., to make return of facts concerning to clerks,.....	169
compensation of sextons,.....	169
record of clerk concerning, to be prima facie evidence in legal proceedings,.....	170
certificate of clerk to be evidence of such record,.....	170
superintendents of state almshouses, to make return concerning,.....	169, 170
town clerks, where such almshouses are located, to be exempt from making returns,.....	170
towns, &c., may make additional rules concerning registration of,.....	170
registrars may be appointed in certain towns, to make record, &c., concerning,.....	170

**DEBT.**

- action of, abolished and actions of contract substituted, except for penalties,..... 653  
for penalties, action of tort substituted for,..... 653

**DEBTORS. (See Insolvency.)**

- Insolvent, proceedings by and against,.....582-601  
provisions for arrest, discharge, and punishment of poor,.....633-642  
(See Poor Debtors.)

**DECLARATION.**

- in actions at law, charge in, taken to be true on default of defendant,..... 658  
In personal actions, how named, and forms of,.....653, 654, 663-666  
need not aver what is not required to be proved,..... 658  
may state the substantive facts, without verbiage,..... 653  
need contain but one count, but with any number of breaches,..... 654  
may assign breaches in the alternative,..... 654  
same count not to include two causes of action on same contract except the count on the account annexed,..... 654  
may include different causes of action, belonging to same division,..... 654  
in actions of contract and tort not to be joined, unless it is doubtful to which class a cause belongs,..... 654  
a count in contract and a count in tort for the same cause of action may be joined, with an averment that they are for the same cause,..... 654  
common counts not to be used unitedly,..... 654  
count on account annexed, may be used in certain cases,..... 654  
supplemental may be made alleging facts occurring or becoming known after former declaration,..... 657  
On written instruments, except policies of insurance, to set out copy or legal effect of instrument,..... 654  
need not contain profer or excuse,..... 654  
to state substance of instruments, lost or destroyed,..... 854  
On bonds, conditional obligations, and contracts, or grants, to set forth condition and breaches,..... 654  
against parties severally liable on same written contract, how made,..... 654  
referring to a general statute, may specify chapter, or make some other general reference,..... 654  
in actions of tort for breaking and entering plaintiff's close, shall designate the place by name, abutals, or otherwise,..... 654, 655  
need not be inserted in writ in actions of contract and tort unless an arrest is made,..... 655  
may be filed in clerk's office on or before return day unless an arrest is made,..... 655  
to be furnished, with bill of particulars, to defendant within three days after demand, when attachment is made,..... 655  
if not inserted in writ, or filed, action shall be discontinued,..... 655  
may be filed on leave of court during return term,..... 655  
on the common counts, bill of particulars to be filed with, and numbered,..... 655  
not to be abated for circumstantial errors, &c., or defects in form,..... 657

**DECLARATION, &c. — continued.**

- demurrer to, for what causes, and how may be made,..... 655  
counts in, unnecessary, or upon which no evidence is given, to be stricken out,..... 661  
not to be deemed evidence,..... 661  
costs allowed for in civil cases,..... 788  
In real actions, on mortgage, title to allege seisin to be in mortgage,..... 654  
In set-off, may be filed with answer, proceedings,.....670, 671  
In trover,.....654, 666  
In writs of entry, what to be alleged,..... 692  
Forms of, in different cases,.....668-667

**FOR NATURALIZATION.**

- not to be received by any court, except the supreme judicial and superior courts,..... 618

**DECLARATION OF RIGHTS,..... 14  
DECREES.**

- Of probate courts, may be appealed from to supreme court,.....548, 575  
to be in writing, &c.,..... 576  
when validity of not to be drawn in question,..... 576  
(See Probate Courts.)  
In equity cases, how made, appealed from, &c.,.....560, 561  
process for execution of not to issue for thirty days, unless an appeal is waived,..... 560  
Of courts of record, suits on, limited to twenty years,..... 777  
presumed to be paid after lapse of twenty years,..... 779

**DEDICATION OF WAYS.**

- provisions respecting,..... 243

**DEED.**

- executed by person having authority, or by his attorney, and acknowledged and recorded, conveys real estate,..... 465, 466  
by agents of counties to be under their proper hands and seals,..... 144  
conveyance of estates, &c., without deed in writing, to have force of estates at will only,..... 466  
in fee simple, fee tail, or for life, or more than seven years, not valid unless by deed recorded,..... 466  
by tenant in tail in common form, to convey a fee simple and bar estates tail and remainders and reversions expectant,..... 466  
by tenant for life and owner of vested remainder in tail, to convey a fee simple, and bar, &c.,..... 466  
of quitclaim and release in common form, to pass estate, like deed of bargain and sale,..... 466  
by tenant for life or years purporting to convey greater estate to pass estate of grantor,..... 466  
such conveyance not to work a forfeiture of estate,..... 466  
by owner of precedent estate not to defeat estate expectant, except estates tail,..... 466  
to person for life and his heirs in fee, shall so vest estate,..... 466  
to two or more shall create estate in common, and not in joint tenancy, unless expressly provided, &c.,..... 466  
exceptions to foregoing provision,..... 467  
purporting to be absolute, not to be defeated by deed of defeasance, unless recorded, except, &c.,..... 467

**DEED — continued.**

- grantor to make known to grantee, if incumbrances exist upon estate conveyed,..... 467
- to be liable for neglect, &c.,..... 467, 802, 803
- vold, if in consideration of money lost in gaming, except, &c.,..... 436
- Of defeasance, not to have any force against third parties without notice, unless recorded,..... 467
- when may constitute a mortgage,..... 716
- form of declaration on warranty in,..... 664

**ACKNOWLEDGMENT AND RECORD.**

- acknowledgment of, to be made by grantors, or one of them,..... 467
- before whom to be taken,..... 182, 467
- by agents of counties,..... 144
- certificate of, to be indorsed on deed by person taking,..... 468
- execution of, how proved if grantor dies, &c., without acknowledgment,..... 467
- how, if witnesses are also dead, &c.,..... 467
- how, when grantor refuses to acknowledge,..... 467
- how, when subscribing witnesses are dead,..... 467, 468
- not to be proved, in such manner, unless it has at least one subscribing witness,..... 468
- when copy of, not acknowledged, may be filed in registry of deeds, and effect thereof,..... 468
- proof of execution to be indorsed on deed by clerk or justice, &c., before whom proved,..... 468
- powers of attorney for execution of, to be acknowledged,..... 468
- when to be acknowledged by both husband and wife,..... 468
- not to be recorded without certificate of acknowledgment or proof,..... 468
- where to be recorded,..... 154

(See Register of Deeds.)

**DEER.**

- penalty for hunting at certain seasons, except, &c.,..... 430
- with dogs, at any time, in Plymouth and Barnstable counties,..... 430

**DEFACING.**

- of public records, how punished,..... 199
- of tombs, gravestones, &c., in cemeteries, &c.,..... 197, 821, 822
- of other property,..... 252, 808

**DEFAULT.**

- if defendant, duly summoned, does not appear, to be recorded, and plaintiff's declaration taken to be true,..... 658
- may be taken off at first term, on payment of costs,..... 658
- to be entered against defendant, unless within ten days after return of writ, or before last day of return term, he files an affidavit of merits,..... 658, 659
- time may be extended by order of court,..... 659
- how and when to be entered against absent defendants,..... 646
- of defendant, for not answering interrogatories or refusing to amend, &c., answers,..... 680
- judgment upon, how to be entered,..... 658, 685
- when part only of defendants are defaulted,..... 685
- in actions upon judgments by default, defendant may, in certain cases, make same defence as on review,..... 668
- of trustees, in trustee process, effect of,..... 722
- of executors and administrators, cited in cases commenced against deceased, effect of,..... 648

**DEFEASANCE.**

- when to operate as a mortgage,..... 716
- not valid against third parties without notice, unless recorded,..... 467

**DEGREE.**

- of murder, to be found by jury,..... 701

**DEMURRER.**

- may be made in answer or replication,..... 655, 656, 657
- causes for, specified,..... 656
- to be certified by the attorney,..... 655
- not to be made for defect of form, &c.,..... 657
- deemed to be joined in by opposite party, unless awarded,..... 657
- may be amended,..... 657
- how heard and determined,..... 651
- decision of one judge on, respecting misjoinder of counts, final,..... 671
- appeal from, may be had in other cases,..... 661
- if adjudged frivolous, &c., court may order party to plead, &c., notwithstanding appeal,..... 651
- when sustained, overruled, or withdrawn, court may make further orders, &c.,..... 651
- In equity cases, defence may be made by,..... 659
- to be accompanied by certificate that it is not intended for delay,..... 659

**DEPOSITIONS.****IN CIVIL CASES.****OF WITNESSES IN THE STATE**

- when and how taken,..... 674, 675
- may be taken to be used in all civil proceedings in this state,..... 674
- when witness lives more than thirty miles from place of trial, or is sick, infirm, or aged, or about to go out of the state,..... 674
- witness, in such case, may be summoned and compelled to attend and give his deposition at any place within twenty miles of his place of abode,..... 675
- may be taken when witnesses live out of, but are at the time in, this state,..... 675
- such witnesses from other states may be compelled to attend at any place within ten miles of place where summoned,..... 675
- taken ex parte, when to be admitted,..... 675, 676, 735, 736
- Applications for the taking of, may be made to any justice of the peace, after service of process, or a case is submitted to arbitrators or referees,..... 674
- Notice of time and place of taking to be issued to adverse party,..... 674
- how served,..... 674
- may be verbal, or wholly omitted, if waived, in writing, by adverse party,..... 674
- Deponent to be sworn, or to affirm,..... 674
- to be examined by justice and the parties, and his testimony taken in writing,..... 674
- on written or verbal interrogatories, first by party producing him, then by adverse party, and afterwards by either party,..... 674
- to subscribe his deposition after it is read to or by him,..... 674
- to be written by the justice, the deponent, or some disinterested person in presence of the justice,..... 674
- to be read to or by the deponent,..... 674
- how certified and used,..... 674, 675
- certificate of time and manner of taking, and

DEPOSITIONS — *continued.*

of other facts to be annexed thereto by justice,.....	674
to be sealed up and delivered, or directed by the justice to the court or magistrate before whom the case is pending,.....	674
when sealed, to remain so until opened by court,.....	674
when taken on written interrogatories, objections to any interrogatory must be made before it is answered, and objections noted,.....	675
objections to the competency or credibility of deponent, and the propriety of questions, and to answers, how made when deposition is produced,.....	675
not to be used, if reason for taking no longer exists,.....	675
when taken for a suit afterwards discontinued or nonsuited, may be used in a second suit for same cause, if it was filed and remains with court,.....	675
rules concerning the opening, filing, keeping, taking, and using, may be made by courts,.....	675
To be used in other states and countries, may be taken before justices of the peace, or commissioners appointed by such states or countries,.....	676
witnesses may be summoned and compelled to testify in such cases,.....	676
may be taken and used in cases of seizing and libelling forfeited goods,.....	773
OF WITNESSES OUT OF THE STATE.	
may be taken under a commission issued by court to persons in other states or countries,.....	675
or by commissioners appointed in other states and countries,.....	675
such commissioners, how appointed, and their duties,.....	132
to be taken on interrogatories exhibited to adverse party, and cross interrogatories,.....	675
may be used subject to same objections and conditions as if taken in this state,.....	675
rules concerning the issuing commissions, filing interrogatories, and other matters respecting taking depositions out of the state, may be made by courts,.....	675
taken in any other manner than as above, may be admitted or rejected at discretion of court under certain circumstances,.....	675
when so taken, not to be admitted, unless adverse party had notice, if possible to be given,.....	675
TO PERPETUATE TESTIMONY.	
of witnesses in or out of the state,.....	675-678
Of witnesses in the state, may be taken on such notice to all persons interested, as is required to be given to adverse party in other cases,.....	676
when sufficient notice is not provided for by law, such notice shall be given as justices deem proper,.....	676
brief statement of claim or interest to be made in writing, and delivered to two justices of the peace,.....	676
one of said justices to be a judge or register of probate and insolvency, a clerk of supreme court, a master in chancery, or counsellor at law,.....	676

DEPOSITIONS — *continued.*

not to be taken, when certain objections are made, and justices may examine party as to the reasons for taking the same,.....	676
to be written, read, subscribed, and certified, and witness sworn, in like manner as in taking other depositions,.....	676
to have annexed an additional certificate, that it was taken in perpetual remembrance; the names of persons at whose request taken; who were notified, and who were present,.....	676
to be recorded, with statement of claim, within ninety days, in registry of deeds,.....	676
may be used in suits between parties taking and those notified, or persons claiming under them,.....	676, 677
copy of, from registry of deeds, may be used in suit,.....	677
used in subsequent suits to be subject to same conditions as when taken for those suits,.....	677
Of witnesses out of the state,.....	677, 678
may be taken under a commission issued by supreme or superior courts,.....	677
party applying for, to file in court a brief statement of claim, in like manner as when proposed to be taken in the state,.....	677
in what county such statement to be filed in different cases,.....	677
statement may be filed and notice issued in vacation,.....	677
notice to be served fourteen days before time of hearing, on all persons mentioned as adversely interested, if living in the state,.....	677
on hearing parties who appear, court may issue commissions, if there is sufficient cause,.....	677
to be taken on written interrogatories, and cross-interrogatories, and returned, as in other cases of commissions issued,.....	677
may be used as if taken in this state,.....	677
rules respecting taking, filing, and recording, may be made by supreme court,.....	677
TO PERPETUATE TESTIMONY AGAINST ALL PERSONS.	
may be taken, as of witnesses in or out of state,.....	677
may be taken on commission issued after public notice, by supreme or superior courts,...	677
party desiring to take, may apply as above, in case of witnesses out of the state,.....	677
proceedings to be substantially same as in case of other witnesses out of the state,.....	677
court, in addition, to inquire upon oaths of applicant or otherwise, as to persons interested,.....	678
shall direct commissioners what notice to give,.....	678
such notice to be directed by name to all persons supposed to be interested, and generally to others,.....	678
when taken and returned, if found to have been correctly done, shall be recorded in registry of deeds within thirty days,.....	678
the original, or a copy, may be used in evidence in all cases wherein the claim or title set out in the statement is brought in question,.....	678
OF PARTIES TO SUITS.	
may be taken of parties who might be witnesses,....	678

**DEPOSITIONS—continued.****IN CRIMINAL CASES.**

- of witnesses ordered to recognize with surety, and unable to find bail, may be taken, with defendant's consent,..... 833
- who to be notified,..... 833
- defendant's consent to be indorsed on deposition, ... 833
- to be returned to court, to which witness was ordered to appear,..... 833
- may be used at trial by either party, if witness is unable to attend,..... 833, 834
- Of witnesses out of the state, may be taken by defendant in criminal cases, after issue of fact joined on an indictment,..... 840
- prosecuting officer may join in commission and name witnesses for commonwealth,..... 840
- how to be taken and returned,..... 840
- if defendant declines to use such deposition at trial, government not to use it without defendant's consent,..... 840

**DEPOSITS.**

- in bank by assignees of insolvent estate, may bear interest,..... 307, 387
- by cities and towns, may bear interest,..... 307

**DEPUTY INSPECTORS.**

- of various articles, how appointed, &c.,  
258, 261, 267, 269, 276  
(*See Inspectors General.*)

**DEPUTY-SHERIFF.**

- how appointed, and sworn,..... 150
- to serve all writs, &c., lawfully directed to them,..... 151, 618
- may require aid in execution of their office, in criminal cases,..... 151
- not to act as attorney, under penalty,..... 151
- not to buy, &c., any demand, &c., with intent, &c.,..... 618
- liability of sheriff for default or misfeasance of,.... 151
- may serve process in their hands at time of vacancy in office of sheriff,..... 151, 152  
(*See Sheriff.*)

**DEPUTY WARDEN.**

- of state prison, (*see State Prison.*)..... 870, 872

**DESCENT OF REAL ESTATE.**

- rules of,..... 474, 475
- not to defeat rights of entry in real actions,..... 692, 776

**DEVISE.**

- to children, &c., not to lapse by death before that of deviser, if they leave issue who survive him,..... 479
- such issue shall take the devise, unless, &c.,..... 479
- to a subscribing witness to a will void, unless there are three other competent witnesses,..... 477

**DEVISEES.**

- to contribute proportions, when estate is taken from a deviser to pay testator's debts or for dower of widow,..... 479, 480
- how liable to contribute to posthumous or other child omitted in father's will,..... 479
- when and how liable for debts of testator,..... 507
- actions against, for such debts, not barred by provisions for actions against executors, &c.,..... 492
- estates of, liable for such debts after their death,.... 507
- not liable to pay more than amount received from testator's estate,..... 507, 508
- when liable to contribute among themselves,..... 508
- liable, in certain cases, to scire facias on judgment recovered against deviser, for penalty of bonds, covenant, &c.,..... 686

**DEVISEES—continued.**

- how may become parties to real and mixed actions and proceedings for partition, commenced by or against deviser,..... 649, 659
- may tender amount due on mortgage of land devised to them,..... 715
- and bring suits for redemption,..... 715
- suits for contribution among, may be brought in supreme court in equity,..... 689

**DIET.**

- of convicts in hospital of state prison to be under direction of physician,..... 576

**DIRECTORS.**

- Of public institutions in Boston,..... 858
- compensation of,..... 858
- powers and duties of, as to house of correction for Suffolk county,..... 858, 859
- may recover forfeiture of jailer for not keeping calendar,..... 860
- may remove children under eighteen months of age, from their mothers,..... 861
- to oversee execution of sentences to solitary imprisonment and hard labor,..... 863
- to remove forthwith any officer by them appointed, known to use intoxicating liquors as a beverage,..... 863, 864
- record of prisoner's conduct to be exhibited to,..... 864
- to fix the rate of pay for board of prisoners,.... 865
- to audit, twice each year, or oftener, accounts for support of convicts,..... 865
- may commence action for sum due for support of prisoner,..... 865
- blank forms of returns to be furnished to,..... 867
- forfeiture for not making returns,..... 868
- Of banks,..... 866
- Of other corporations. (*See their Titles.*)

**DISCHARGE.**

- Of insolvent debtors, (*see Insolvency.*)..... 591
- Of poor debtors, on mesne process and execution, (*see Poor Debtors.*)..... 635-637
- Of bail, in civil cases how made of principal,.... 643, 644  
(*See Bail.*)
- Of military officers, (*see Militia.*)..... 100, 101

**DISCHARGED CONVICTS.**

- forfeitures for failing to keep prison book, &c., or to make official returns, to go to relief of,..... 868, 869
- from state prison, provisions respecting,..... 577

**DISCIPLINE.**

- of convicts in state prison,..... 574, 575
- in other prisons,..... 860-861

**DISCLAIMER.**

- may be pleaded in abatement, or given in evidence under general issue,..... 693
- party pleading not to have costs before plea is filed,..... 694

**DISCONTINUANCE.**

- not to defeat rights of entry, or real actions,.... 692, 715
- of actions by plaintiff, not allowed after set-off filed, unless defendant consents,..... 671
- when caused by insolvency, &c., defendant not to have costs,..... 719
- costs on, must be paid, or second suit for same cause will be stayed or dismissed,..... 715

**DISCOUNT OF TAXES.**

- may be allowed by towns,..... 5
- how made, and notice of how given by assessors,..... 5

**DISCOVERY.**

- suits for, may be brought in supreme court in equity,..... 59



**DISCOVERY — continued.**

- answers in such cases to be made without delay, and questions on, how determined,..... 559
- by interrogatories and answers between parties to suits,..... 659, 660

**DISEASED PROVISIONS.**

- penalty for knowingly selling, without notifying buyer,..... 822

**DISEASES.**

- dangerous to public health,..... 190-198
- proceedings when persons are sick with,..... 190, 191, 192
- hospitals for reception of persons sick with,..... 192, 193
- householders, &c., to give notice of, to board of health, &c., under penalty,..... 198
- regulations concerning persons sick with small pox,..... 198
- fence erected to prevent spread of, not to be removed by surveyors of highways,..... 246

**DISORDERLY CONDUCT.**

- in presence of senate or house of representatives,.... 22
  - at elections, penalty for,..... 61
  - at town and parish meetings,..... 160, 202
- (See Contempt.)

**DISORDERLY PERSONS.**

- common, how punished,..... 820, 821
- in night time, how may be arrested and detained,..... 821

**DISQUALIFICATION.**

- of persons from acting as attorneys, &c., in cases in which they have acted as magistrate or judge,..... 610, 615, 616
- of judges of probate and insolvency, when by reason of interest,..... 602
- jurors not disqualified in certain cases,..... 618, 683
- nor on account of being inhabitants of Boston, &c.,..... 618
- not to arise on account of judge, magistrate, appraiser, or officer being an inhabitant of town which is interested,..... 618
- of persons convicted of fighting duel, &c., from holding office,..... 792

**DISSECTION.**

- when body of person executed, to be delivered up for,..... 791

**DISSEISIN.**

- when right of entry or action for, accrues,..... 775
  - of minister or other sole corporation, entry to be in five years,..... 775
  - of precedent estate not to bar or defeat estate in expectancy,..... 566
  - of devise, after devise made, not to affect devisee's right to the estate,..... 476
  - what to be considered, for purpose of trying title,..... 520, 692
- (See Writ of Entry.)

**DISSOLUTE PERSONS.**

- going about begging, how to be arrested and punished,..... 820, 821

**DISTRAINING.**

- of cattle being at large contrary to law, or doing damage,..... 185
- when person distraining, to leave with poundkeeper memorandum of cause, amount of damage, &c.,..... 185
- when to give like memorandum to owner of beasts,..... 185
- beasts not to be delivered until costs, &c., are paid,..... 185
- how notice of impounding to be given to owner &c.,..... 185

**DISTRAINING — continued.**

- how, if owner is not known, &c., or does not appear within seven days,..... 186
  - how damages to be determined in case of dispute,.... 186
  - when owner does not pay damages within fourteen days after notice, &c., cattle to be appraised, &c., and damages determined,..... 186
  - if damages so determined are not paid forthwith, cattle to be sold at auction,..... 186
  - notice of auction, how given,..... 186
  - proceeds of sale, how disposed of,..... 186
  - penalty for rescuing beasts distrained,..... 186
  - beasts impounded, &c., escaping or rescued, may be retaken within seven days,..... 186
  - legality of distress, how to be tried,..... 187, 730
- DISTRAINING FOR TAXES.**
- provisions concerning,..... 82

**DISTRIBUTION.**

- of personal estate after payments of debts of deceased, rules of,..... 495
- of land held in mortgage or taken on execution, to be like that of personal estate,..... 490
- advancements to issue, not to be computed in distribution to widow,..... 495
- of estates of insolvent debtors,..... 581-600
- of insolvent estates of deceased persons,..... 496-498

**DISTRICT ATTORNEYS.**

- how and when chosen,..... 88, 70
- for what districts,..... 130
- salaries of,..... 130, 181
- term of office,..... 70
- return of votes for,..... 59, 60
- to be a resident in district,..... 70
- in case of failure to elect, governor to order new election,..... 71
- vacancies, how filled,..... 72, 181
- may be removed from office by supreme judicial court,..... 568
- one for each district,..... 130
- in absence of, court may appoint person to act,.... 130
- not to receive any fee from prosecutor, nor be counsel in certain cases,..... 130
- to account with state treasurer for fees, costs, &c.,.. 150
- general duties of,..... 131
- may interchange official duties,..... 131
- to enforce payment from public officers of money due county,..... 149
- to prosecute overseers of poor, &c., for neglect to make returns of paupers to secretary,..... 395
- to institute suits for recovery of expenses of support of state lunatic paupers in certain cases,..... 409
- to bring suits on defaulted recognizances given under liquor prosecutions, &c.,..... 448
- to prosecute public administrators for neglect of official duties,..... 488
- to file information, &c., against persons unlawfully intruding or holding lands of commonwealth,..... 717-719
- or certain Indian lands,..... 719
- to attend examination of poor debtors seeking to be discharged from imprisonment on warrants of distress in favor of state,..... 639
- may disallow magistrates' fees in certain criminal cases, in whole or in part,..... 738
- to institute complaint against overseers of house of correction, or, in Suffolk, against directors of public institutions, for forfeiture for neglecting to make official returns,..... 863

**DISTRICT-ATTORNEYS — continued.**

- Assistant, for Suffolk district, may be appointed by governor and council,..... 181
- salary of,..... 181

**DISTRICTS.**

- to have powers, &c, of towns,..... 165
- for choice of senators,..... 19, 26, 39, 62, 63, 64
- representatives in congress,..... 67, 68
- representatives in general court,..... 38, 39, 64
- councillors,..... 19, 37, 62
- for administration of criminal law,..... 130
- for registry of deeds in Berkshire, Bristol, and Middlesex,..... 153

**DISTURBANCE.**

- of assemblies for religious worship, how punished,..... 819
- of camp meetings,..... 819
- of school, or other lawful assembly,..... 820
- of a funeral procession or assembly,..... 820

**DIVIDENDS.**

- of estates of insolvent debtors, how made,..... 594, 595
- may be attached and held by trustee process,.... 723

**DIVORCE.**

- proceedings of court in matters of, how regulated, &c.,..... 536
- certain marriages void without decree of,..... 531, 532
- obtained out of state, for cause not sufficient here, of no effect,..... 537
- provisions as to polygamy, in case of,..... 518
- From bond of matrimony, for adultery or impotency of either party,..... 532
  - when one party, without consent of the other, has united with a sect that professes the marriage relation to be void, &c., and so continues for three years, &c.,..... 532
  - when a party is sentenced to hard labor in jail, &c., for life or five years,..... 532
  - a pardon granted after a divorce in such case, not to restore conjugal rights,..... 533
  - when one has deserted the other for five years consecutively,..... 532
  - but when application for, is made by party deserting, it must appear that desertion was caused by extreme cruelty,..... 532
  - or that desertion by wife was caused by neglect to provide maintenance, &c.,..... 532
- libel not defeated by temporary return of party deserting,..... 532
- in certain cases, after divorce from bed and board,..... 532
- when parties have lived separately for ten consecutive years,..... 532
- penalty for living together again,..... 533, 534
- From bed and board, for extreme cruelty, utter desertion, gross and confirmed habits of intoxication contracted after marriage, or cruel and abusive treatment, and on libel of wife when husband refuses to suitably maintain her,..... 532
- may be decreed when libellant has lived in state five years, unless he removed here to procure it,..... 532
- not to be granted, if parties have not cohabited in this state, except, &c.,..... 532, 533
- Libels for, where to be heard and determined,..... 533
  - either party to, may have trial by jury,..... 533
  - proceedings as in suits at common law,..... 533
  - to be signed by libellant or guardian,..... 533
  - how to be filed, and notice thereof served,..... 533
  - if service is insufficient, court may order further notice,..... 533

**DIVORCE — continued.**

- to be answered by guardian, if respondent is insane,..... 533
- during pendency of, wife may have alimony, and allowance to carry on suit,..... 533
- wife to be protected from husband's restraint,..... 534
- court may make order concerning care, &c., of children,..... 534
- Alimony may be allowed during pendency of suit,..... 535
- upon or after decree of divorce, in certain cases,..... 535, 536
- decrees of, may be enforced by the court,..... 536
- may be revised or altered by the court,..... 536
- Children, care and custody of, during pendency of libel,..... 534
  - after divorce,..... 534
  - of parents divorced in another state,..... 534
  - of parents who live separately, although not divorced,..... 535
- to be determined by their happiness and welfare,..... 535
- and rights of parents, in the absence of misconduct, to be held to be equal,..... 535
- of persons divorced not to be removed from state without their consent, &c.,..... 534, 535
- General provisions, woman divorced may resume her former name,..... 533
- innocent party divorced from bonds of matrimony may marry again,..... 534
- in what case either party may be authorized to marry again,..... 534
- issue of marriages dissolved, &c., by, for commingunity, &c., illegitimate,..... 534
- for certain other causes, not affected,..... 535
- in what cases wife entitled to dower,..... 535
- when granted for adultery of wife, husband to hold her estate, except, &c.,..... 533
- for any other cause, wife to hold her estate, &c.,..... 535
- court may appoint trustee of wife's property,..... 535
- husband may be examined on oath as to wife's personal property,..... 535
- husband's property may be attached on certain libels for,..... 535
- attachment may be made on summons or order of notice,..... 535
- laws relating to, to apply,..... 535

**DOGS.**

- to be annually registered and licensed,..... 461
- fees for license,..... 461
- clerk to issue license, and treasurer to keep account of money concerns,..... 461
- to post list of dogs licensed,..... 461
- to furnish copy of list to constables, &c.,..... 461
- license when to expire,..... 461
- new, not required, if owner removes to another town, unless, &c.,..... 461
- penalty for keeping dogs without,..... 461
- penalty for removing collar from, or stealing or killing, if licensed,..... 461
- for exposing poisons for,..... 461 462
- may be killed when not licensed,..... 462
- bounty for killing,..... 462
- owner of, to forfeit double the damage done by,..... 462
- may be killed by any person assaulted, &c., and when found worrying cattle, &c.,..... 462
- dangerous, to be confined or killed by owner,..... 462
- penalty on owner for neglect in such case,..... 462

**DOGS — continued.**

may be killed by any person, after notice to owner,.....	462
liability of owner for damage done by,.....	462
towns liable for damages done by, in certain cases,.....	462
may recover same of owner,.....	462
persons damaged by, to have choice of remedy,.....	462
mayor and aldermen to require dogs not licensed, &c., to be destroyed,.....	463
penalty on officers for neglect of duties imposed,.....	462
additional by-laws concerning, may be made by towns, &c.,.....	463
finer, &c., how recovered,.....	463

**DOORKEEPERS.**

of senate and house of representatives,.....	22, 48
--	--------

**DOUBLE COSTS. (See Costs.)**

when, how, and what to be taxed,.....	781
---------------------------------------	-----

**DOWER.**

**RIGHTS OF.**

in husband's land, after his death, unless lawfully barred,.....	469
after divorce, for his adultery, or imprisonment, &c.,.....	586
what, in mortgaged estates,.....	469
in lands taken in execution for husband's debts,.....	524
held by husband under a demise for one hundred years, &c.,.....	471
tenant in, liable for part of rent in such case,.....	471
and prior devices of such terms not affected, &c.,.....	471
in wood lot, &c., used with husband's farm or dwelling-house,.....	470
not in other lands that were wild when husband died or conveyed them,.....	470
title to, not affected by advancements, &c.,.....	475
in case of divorce for adultery of husband, or his being sentenced to confinement to hard labor,.....	697
provisions in lieu of,.....	540
if widow waives provision for her in husband's will, entitled to dower,.....	478
if husband dies intestate, without issue, widow entitled to one half of estate for life,.....	470, 471
if any part of such estate is wild, &c., widow may use, &c., the same,.....	471
widow may have dower instead, if claiming within six months,.....	471
undivided estate of widow in estate of husband may be set off same as,.....	471
to be claimed within twenty years from death of husband, except, &c.,.....	469, 470
tenant in, if evicted or deprived of jointure or provision in lieu of, may be endowed anew,.....	470
may be enjoyed by widow, by joint occupation with heirs, without being assigned,.....	470

**HOW RELEASED AND BARRED.**

barred by wife's release of claim to, in deed by husband and herself,.....	470
in deed by his guardian and herself,.....	589
by divorce for her adultery, &c.,.....	585
by jointure settled by wife's assent, before marriage,.....	470
by pecuniary provision in lieu of, by similar assent,.....	470
by jointure, &c., without assent, or after marriage, unless waived, within six months,.....	470
by provision in husband's will, if widow elect to take it,.....	470
if widow does not waive provision in husband's will, unless, &c.,.....	478

**DOWER — continued.**

by sales under mortgages with power of sale,.....	718, 717
in case of insane married women, how released, &c.,.....	540
not barred by divorce from bed and board,.....	536

**HOW ASSIGNED, RECOVERED, &c.**

in what cases, and in what manner, assigned by probate court,.....	469
commissioners appointed to assign, to be sworn,.....	469
fees of,.....	786, 787
how assigned when estate is not divisible,.....	469
may be assigned and set out by guardian of the heir, &c.,.....	546
partition of lands may be made before assignment of,.....	469
when not set off by heir or tenant, nor assigned by probate court, may be recovered by writ of dower,.....	697
must be demanded of tenant of freehold one month before action brought,.....	697
what a sufficient demand,.....	697
action for, to be brought against tenant of freehold,.....	697
in action of, certain general provisions respecting dower to apply,.....	697
Damages for detention of, may be recovered in action for,.....	697
tenant liable for, only while he held the premises, if demand had been made previously,.....	697
may, after judgment for dower, be recovered for rents and profits in an action of tort of a prior tenant of the freehold on whom demand was made,.....	697
How set off, if recovered in an action of dower,.....	697
writ of seisin to issue to officer,.....	697
to be set off by three commissioners,.....	697
may be set off from the rents and profits, if the land cannot be divided without damage,.....	697
Tenant in, how liable for waste,.....	708, 709, 710
penalty on, if she commit or suffer waste,.....	470
liable for part of rent,.....	471
to contribute to redemption of mortgage, when endowed of mortgaged estate,.....	469

**DRAFTS, (see Bills of Exchange.)**

**DRAINS AND SEWERS.**

in Boston, how laid and maintained,.....	258
land taken and damages appraised as in case of highways,.....	258
in certain other places, how laid and maintained,.....	254
expense of, how to be assessed on proprietors of private drains, entering main drains,.....	254
in Boston, one fourth to be paid by city,.....	254
such assessments to constitute lien upon real estate for one year,.....	254
may be levied by sale, if not paid within three months after demand,.....	254
party aggrieved may have jury, as in case of highways,.....	254
proceedings in such case,.....	254
part of expense of, may be paid by town, &c.,.....	254
highways not to be dug up for laying, without consent of selectmen, under penalty,.....	254
how to be constructed,.....	254
persons benefited, to share expense of making and maintaining, &c., drain built by individuals,.....	254, 255
expense to be determined by selectmen, subject to right of trial by jury,.....	254, 255

**DRAINS, &c. — continued.**

persons refusing to pay, shall pay double amount assessed, &c.,	255
such amount, how recovered,	255
notice to be given before opening, &c.,	255
parties interested may object, &c.,	255
if objections adjudged reasonable, objectors exempted from expense,	255
if objections not made, &c., selectmen may authorize opening, &c.,	255
agreements of proprietors of, not affected by these provisions,	255
expenses of opening to be paid by persons interested,	255

**DRAWBRIDGES in railroads, (see Railroads.)** 359, 360**DRINK.**

penalty for fraudulently adulterating articles intended for, for purposes of sale,	822, 823
knowingly selling such articles,	823
such liquors to be forfeited,	823

**DRIVERS.**

of carriages on roads, regulations for when meeting or passing other carriages,	423
of coaches, &c., how punished for leaving horses untied, if person is in coach,	794

**DRUGS AND MEDICINES.**

fraudulent adulteration of, for purposes of sale, how punished,	823
knowingly selling such drugs, how punished,	823
such drugs to be forfeited,	823

**DRUGGISTS.**

may sell pure alcohol for medicinal purposes to physicians, &c.,	442
--	-----

**DRUNKENNESS.**

by voluntary use of intoxicating liquor, first and second offence how punished,	820
prosecution not to be commenced after six months,	820
on second conviction, may be committed to workhouses,	820
in Boston, may be committed to house of industry,	820
imprisonment, pardon, and discharge to be as in cases of persons held for non-payment of fine and costs,	820
when cause for divorce,	582

**DUEL.**

penalty for engaging in, with deadly weapon,	791, 792
--	----------

**DUEL — continued.**

for challenging to fight such duel,	791
penalty for accepting, &c., such challenge,	792
present at such duel as aid, surgeon, &c.,	792
promoting or encouraging such duel,	792
conviction of fighting such duel to disqualify for holding office,	792
resident of this state engaging here to fight out of state, and there giving wound from which party dies here, is guilty of murder, and where tried,	791, 792
resident of this state, &c., if second to either party in such duel, is accessory to such murder, &c.,	792
former conviction or acquittal in other state a bar to proceedings here,	792
posting, &c., another for not fighting a duel, &c., how punished,	792

**DUKES COUNTY.**

need not provide house of correction,	144
county commissioners of,	7, 15
cases arising in, cognizable by single judge of supreme court, to be heard in county of Barnstable,	556, 557
law questions in, to be heard by supreme court for commonwealth,	555, 556
capital cases in, to be heard by supreme court in Barnstable county,	555
special term of court, how held for such cases,	555
jurors in, liable to be drawn and serve once in two years,	600
list of, may include one for every thirty inhabitants,	600
how obtained when inhabitants of any town are interested,	601

**DUMPLING ROCK.**

ceded to United States, for lighthouse,	4
---	---

**DUTIES.**

provisions of United States constitution concerning,	4, 5
--	------

**DWELLING-HOUSE.**

masters, &c., of, to give names of persons taxable and liable to enrolment to assessors, under penalty,	77
punishment for wilful, &c., injury to, by gunpowder, &c.,	808, 804

**DWELLING-PLACES.**

unit for occupancy, how may be cleaned, vacated, &c., by order of board of health,	139
--	-----

**E.****EASEMENT.**

not acquired by maintaining electric telegraph lines,	374
of light and air, not to be acquired by use,	473
from, in, upon, or over, land of another, not acquired except by twenty years' uninterrupted adverse use,	473
acquiring may be prevented by written notice from owner of land,	472
notice, how served and returned,	472
to be recorded in registry of deeds,	472
may be given by guardian or agent,	472
how given, when party to be notified is unknown,	472

**EASEMENT — continued.**

notice to prevent the acquisition of easement is such a disturbance of right as to give an action of tort to try the right,	775, 777
if plaintiff prevails in such case, he may have full costs, although the damages are nominal,	777

**EASTERN POINT.**

land on, for lighthouse, ceded to United States,	4
--	---

**EASTHAM.**

land in, for lighthouse, ceded to United States,	6
--	---

**EAST ROCK.**

of Cat Island, ceded to United States,	4
--	---

**EDGARTOWN.**

- land at entrance of harbor of, ceded to United States,  
for lighthouses, ..... 44

**EDUCATION.**

- duty of legislature and magistrates to foster, ..... 28, 29  
funds held by towns for purposes of, trustees to  
report annually to selectmen, &c., concern-  
ing, ..... 206

**BOARD OF EDUCATION.**

- how constituted, ..... 210  
term of office of members of, ..... 210  
vacancies in, how filled, ..... 210  
may take and hold grants, &c., in trust, for edu-  
cational purposes, ..... 210  
to pay over to state treasurer forthwith all money re-  
ceived for such purposes, ..... 210  
duty and responsibility of treasurer, ..... 210  
to prescribe form of school registers, and of blanks  
for inquiries and returns, ..... 210  
may appoint agents to visit schools, confer with  
teachers, lecture, &c., ..... 211  
to arrange for forming, &c., teachers' institutes, ..... 211  
annual report of, with abstract of school returns, to  
be laid before legislature, ..... 52, 210  
when may be put in type, ..... 58  
number and distribution of, &c., ..... 58, 227  
incidental expenses of, to be paid by state, ..... 211  
to arrange sections and classes for state scholar-  
ships, ..... 214  
duties of, in selection, &c., of candidates for scholar-  
ships, ..... 214  
Secretary of, to be appointed by board, ..... 210  
to be state librarian, ..... 54  
to make abstract of school returns, &c., ..... 210  
general duties of, ..... 210  
to give notice of, and attend meetings of teachers  
and school committees, ..... 210, 211  
to send to town clerks blanks for returns, school  
registers, &c., ..... 211, 226  
to notify school committees, &c., forthwith, when  
reports or returns not made according to  
law, ..... 227  
to return same if found informal, &c., ..... 227  
salary of, ..... 211  
travelling and office expenses, to be paid by  
state, ..... 211  
Clerk of, to be assistant state librarian, ..... 54, 211  
salary of, ..... 54  
Teachers' institutes, may be formed by, ..... 211  
length of session, and expenses of same, how  
paid, ..... 211  
County associations, to receive fifty dollars  
a year from state, if they hold semi-  
annual meetings not less than two days  
each, ..... 212

**EDUCATIONAL ASSOCIATIONS.**

- seven or more persons to be body corporate for edu-  
cational purposes, ..... 207  
purpose and location to be specified in articles, ..... 207  
to have usual corporate powers, ..... 207  
may hold real and personal property not exceeding  
one hundred thousand dollars, ..... 207  
estate not exempted from taxation where used for  
other purposes, &c., ..... 207

**EGG ISLAND SHOAL.**

- ceded to United States, ..... 45

**EGG ROCK ISLAND.**

- ceded to United States, ..... 45

**ELECTIONS.**

- all ought to be free, ..... 45  
not to be held on days when militia are required by  
law to do duty, ..... 58

**ELECTIONS — continued.**

- by the people, of all officers, to be by plurality of  
votes, ..... 86, 59

**QUALIFICATION OF ELECTORS.**

- constitutional provisions concerning, ..... 19, 82, 83, 89  
statute provisions concerning, ..... 56, 57

**MANNER OF CONDUCTING, AND RETURNING VOTES.**

- polls, when may be opened, ..... 58  
warrant to specify time for opening polls, ..... 58  
how long to be kept open, ..... 58  
not to be kept open after sunset, ..... 58  
to be presided at by selectmen, ..... 19, 22, 58  
presiding officers to be provided with list of  
voters, ..... 58  
no person allowed to vote, unless name is on  
list, ..... 58  
selectmen, when not answerable for refusing  
vote, ..... 58  
self-sealing envelopes to be provided by secretary  
of commonwealth, ..... 58  
same to be furnished to towns when applied  
for, ..... 58  
city and town clerks to keep same for use of  
voters, subject to order of selectmen,  
wardens, &c., ..... 58  
votes not received, unless in envelope, or open and  
unfolded, ..... 58, 59  
what to be rejected, ..... 59  
for national, state, &c. officers, to be received,  
sorted, &c., by selectmen, &c., and decla-  
ration made in open meeting, ..... 59  
number of, and names of persons voted for,  
to be recorded, ..... 59  
In cities, how to be conducted, ..... 61  
Return of votes, ..... 19, 22, 26  
ward clerks to deliver copies of record to city  
clerks, who shall record the same, ..... 59  
mayor and aldermen, and city clerk, to examine  
such returns, and, if faulty, require new  
returns, &c., ..... 59  
secretary to furnish town and city clerks with  
blanks, &c., for, ..... 60  
for state, district, and certain county officers to  
be made to secretary within ten days after  
election, ..... 59, 68  
or such returns may be delivered within three  
days to sheriff, ..... 59  
proof of, by mail, to bar complaint for delin-  
quency, ..... 59, 60  
when unsealed, secretary to notify return-  
ing officers, who shall make new re-  
turn, ..... 60  
to be transmitted to governor and council, with  
seals unbroken, ..... 60  
to be examined by governor and five at least of  
council, and issue summons, ..... 60  
how to be certified, ..... 60  
to be laid before legislature, with certificate of  
governor, &c., ..... 60  
for county treasurer and register of deeds to  
county commissioners, ..... 59, 61  
blanks for, to be furnished by county com-  
missioners, ..... 147  
for county commissioners, within seven days, to  
clerks of courts, ..... 59, 60  
blanks for, by whom to be furnished, ..... 147  
when and by whom examined; penalty for neg-  
lect, ..... 60  
Penalty for voting at, if not qualified, ..... 61  
for giving more than one ballot, ..... 61

**ELECTIONS — continued.**

for giving false answers to selectmen, &c.,	61
for attempting to influence voters by bribes or threats,	61
for aiding unqualified persons to vote,	61
for disorderly conduct at elections,	61
on town officers for neglect of duty,	61
on town clerk, &c., for failure to make returns of votes,	61
for fraudulently obtaining envelope,	58

**OF STATE OFFICERS.**

time of holding,	36, 62
Governor,	22, 23, 34, 36, 62
Lieutenant-governor,	25, 34, 36, 62
Councillors,	36, 37, 62
Senators,	38, 62, 68
Representatives in general court,	64
contents of warrant for meeting,	64
town, constituting a district, failing to elect, may have other ballotings on same day,	64, 65
in such case, polls not to be opened after five o'clock, P. M.,	65
proceedings in case of failure to elect in district contained in a town, city, or wards of a city,	65
in composite districts,	65
in towns, &c., composing part of a district, selectmen, &c., to deliver to clerk a transcript of the record of votes,	65
certificates of election in single districts, by whom made, and how transmitted, &c.,	65, 66
and in composite districts,	66
form of certificate of election,	66
proceedings in case of vacancy in representative district,	66
blanks for certificates, &c., to be furnished by secretary,	66
clerks and selectmen, may be paid for services, .	66
if vacancy in office of clerk, clerk pro tempore may be appointed,	66
penalty on town and city officers for neglect, &c.,	66
selectmen and clerks for giving false certificates,	66
Secretary, treasurer, auditor, and attorney-general,	37

**OF NATIONAL OFFICERS.**

Of representatives in congress,	77
meetings, how called,	58, 68
when held,	68
return of votes,	59, 68
proceedings in case of no choice,	68
and in case of vacancies,	68
precepts to be transmitted by sheriffs to town and city officers,	68
penalty on city and town officers for neglect,	69
Of electors of president and vice president of United States, provisions concerning,	69

(See Electors, &amp;c.)

**OF DISTRICT AND COUNTY OFFICERS.**

Clerks of the courts,	70-72
of police courts,	569
when may be had to fill vacancies,	569
Commissioners of insolvency,	70-72
County commissioners,	70-72
County treasurer,	70-72
District attorneys,	70-72
Registers, of probate and insolvency,	70-72
of deeds,	70-72

**ELECTIONS — continued.****OF TOWN OFFICERS.**

moderator to preside at,	160
qualification of voters at,	160
what officers to be chosen at annual meeting,	160
what officers to be chosen by written ballot,	161
if person elected constable does not accept, new election to be had,	161

**ELECTION SERMON.**

compensation of preacher of,	45
------------------------------	----

**ELECTORS OF PRESIDENT AND VICE-PRES-****IDENT.**

when and how chosen,	69
names of all electors to be on one ballot,	69
each ballot to contain one inhabitant of each congressional district designated, &c.,	69
votes for, how counted, examined, and returned, &c.,	59, 69
governor to transmit certificate of election,	69
if majority not chosen, general court to choose,	69
vacancies, how filled,	69
when and where to convene to vote for president, &c.,	69
to vote by ballot,	69
to make and certify lists of persons voted for, and transmit to president of United States senate,	69
to proceed conformably to constitution and laws of United States,	69
compensation of,	69
duties of sheriffs, city and town officers, &c., at elections of,	69

**ELECTRIC TELEGRAPHS.**

provisions concerning,	37-374
------------------------	--------

(See Telegraph Companies.)

**ELDERS.**

of churches, when a corporation, together with minister or deacons, to take, &c., grants, &c.,	25
--	----

**ELIZABETH ISLANDS.**

one of them, (Sow and Pig,) ceded to United States,	46
---	----

**EMBEZZLEMENT.**

by officers, commissaries, or storekeepers, in actual service,	123
at fires, to be deemed larceny,	171
by mariners and shipmasters, how far ship owners answerable for,	239
of estates of deceased persons, proceedings in case of,	439
of estates of wards, proceedings in case of,	546, 547
persons suspected of, in respect to property of insolvent debtors, how may be cited in and examined,	57
of property the subject of larceny, to be deemed simple larceny,	79
by persons in state treasury,	706, 89
by town, city, or county officers,	92
by officers or servants of any incorporated company,	99
by clerks or servants of individuals or copartnerships,	99
except apprentices, and those under sixteen years,	99
by officers or servants of banks,	99
taking by an accomplice to be deemed taking by officer, &c.,	99
not necessary at trial to identify the particular money, notes, bills, &c., embezzled,	99
by carriers or other business,	99

**EMBEZZLEMENT — continued.**

form of indictment in certain cases of embezzlement, .....	800
particulars of embezzlement need not be specified, .....	800
what evidences may be given at trial, .....	800
what shall not be a variance, .....	800, 841
how ownership of property embezzled may be proved, .....	841

**ENCAMPMENT.**

of militia, provisions concerning, .....	105, 106
(See <i>Militia</i> .)	

**ENCROACHMENTS.**

on highways and public places, provisions respecting, .....	251
---	-----

**ENGINEERS.**

of fire departments, powers and duties of, .....	178-181
(See <i>Fire Departments</i> .)	

**ENGINEEMEN.**

to be appointed by selectmen, &c., where there is no fire department, .....	177
number of, to each engine, .....	177
axe-men to be selected from, .....	177
annual meeting of, for choice of officers, &c., .....	177
may make rules and regulations, and annex penalties thereto, .....	177
such rules subject to approval of selectmen, &c., .....	177
such penalties not to exceed ten dollars, to be recovered by clerk, .....	177
to meet once a month to examine engine, &c., .....	177
general duties of, .....	177
if negligent, may be discharged by selectmen, &c., .....	178
certain provisions concerning compensation of, to be in force in places where adopted, .....	178
chief engineer, &c., to certify lists to assessors, .....	178
assessors to examine and certify lists to treasurer, .....	178
treasurers to pay, .....	178
penalties for neglect, and remedies, .....	178
how exempted from military duty, .....	98
For private engines, may be appointed by selectmen, &c., upon application of owners, .....	177
if selectmen refuse, county commissioners may appoint, .....	177
such engineemen to live near engine, &c., .....	177, 178
In Boston, exempt from serving as jurors, .....	680
In other places, exempt from serving as jurors by vote of town, or council of cities, .....	680

**ENGINES, FIRE.**

different kinds of, provided in towns, how manned, .....	177
penalty for maliciously injuring, &c., .....	178
Private, to be kept where selectmen, &c., direct, if owners do not agree, .....	177
punishment for wilfully, &c., injuring, and apparatus, within twenty-four hours of fire, .....	796
for such injury during the burning, .....	796, 797

**ENGRAVING.**

plates, &c., for forging or counterfeiting bank notes, how punished, .....	808
moulds for making counterfeit coin, .....	810
shop bills resembling bank bills, &c., .....	811
convicts in state prison not to be employed in, .....	874

**ENTERING.**

dwelling house in night time, without breaking, with	82 *
--	------

**ENTERING — continued.**

intent to commit felony, no person being put in fear, how punished, .....	797
any building, ship, or vessel, with such intent, .....	797
(See <i>Breaking and Entering</i> .)	

**ENTRY.**

Into lands, rights of, not defeated by descent or discontinuance, .....	692
not to be made except in cases allowed by law, and peaceably, .....	707
need not be proved in writ of entry, .....	692
for breach of condition of mortgage, and to foreclose same, .....	712
affidavit and certificate of, in such case, to be recorded, .....	712, 718
Writ of, except on demandant's own seisin, abolished, saving certain rights, .....	693
(See <i>Real Actions, Forcible Entry and Detainer</i> .)	
limitation of right of, upon lands, .....	775, 776
what it must be, and how continued, to be effectual, .....	776
provisions concerning, .....	692-696
Of actions and appeals, when to be made.	
(See <i>Actions, Appeals</i> .)	
Of exceptions.	
(See <i>Exceptions</i> .)	

**ENVELOPES.**

for voting, provisions concerning, .....	58, 59
(See <i>Elections</i> .)	

**EQUITY.**

JURISDICTION OF SUPREME JUDICIAL COURT.	
supreme court to have full equity powers, .....	558
to have exclusive jurisdiction of all cases where relief in equity is prayed for, .....	558
may issue writs necessary to secure justice and equity to courts, corporations, and individuals, .....	558
To have jurisdiction in equity in the following cases: —	
for redemption and foreclosure of mortgages, .....	558, 714, 717
for enforcing and regulating trusts, .....	501-508, 558
for appointment of trustees for separate property of, and damages awarded to, married women in certain cases, .....	538
for specific performance of written contracts, .....	559, 576
to compel redelivery of goods secreted and withheld from owner, .....	559
to recover of heirs, devisees, &c., payment of deceased's debts in certain cases, .....	507, 508
for contribution between devisees, legatees, heirs, and persons liable to same debt when more than one person is liable, .....	480, 508, 559
for contribution among devisees when land of one or more is taken for dower, .....	480
in other cases where there are more than two parties having distinct rights, .....	559
between copartners, joint tenants, tenants in common, and their representatives, .....	559
between trustees, co-executors, co-administrators, and their representatives, .....	559
for waste and nuisance, .....	559, 710, 711
upon accounts which cannot conveniently be adjusted at law, .....	559
creditors' bills, .....	559
cases of fraud, and conveyances of real estate in nature of mortgages, .....	559
cases of accident and mistake, .....	559
bills of discovery, .....	559

**EQUITY — continued.**

in case of sales of real estate for taxes,.....	86
of illegal appropriations of money by towns,.....	186
to compel conveyance of legal estate to grantees of equitable estates tail,.....	466
for redemption by debtor of land set off on execution,.....	520
in controversies between loan fund associations and members,.....	385
in cases arising out of railroad mortgages,.....	368, 367
for closing corporations, and in questions arising upon expiration, &c., of charters,.....	388, 389
when bank bills are unlawfully detained,.....	307
for partition of water rights, mill privileges, &c., between tenants in common,.....	706
by one mill proprietor against another to compel alterations of dams,.....	761
by creditors, against two or more such proprietors,.....	761
respecting the liability of officers and stockholders, &c., of corporations,.....	309, 327, 386
illegal proceedings, insolvency, &c., of corporations,.....	301, 312, 316, 321
division between tenants for life, &c., of sums allowed to tenants in real actions for improvement,.....	696
the unauthorized use of trade marks and names,.....	298
the prevention of unauthorized erection of stables and bowling alleys,.....	458, 468
for discovery of amount of loss by embezzlement on board of vessels, and apportionment of same,.....	289
for compelling actions to be brought to settle titles to real estate,.....	696
to enforce performance by railroad corporations of orders of county commissioners, &c.,.....	356, 357, 358
to limit period of liability of banks surrendering their charters,.....	313
for superintendence of the proceedings of courts of insolvency,.....	582
for restraining town agents from purchasing, &c., liquor contrary to law,.....	441

**PROCEEDINGS IN EQUITY.**

cases in equity, how commenced,.....	559
upon bill filed, subpoena, how to issue,.....	622
subpoena, how served,.....	624
discovery, how sought, and answers, how made,.....	559
bills in, to be indorsed before entry if brought by persons living out of state,.....	622
when may be required to be indorsed after entry, or indorser changed,.....	657
when bill in, for redemption of mortgage, is inserted in writ, what shall be deemed commencement of action,.....	714
defence in equity to be by demurrer, plea, or answer,.....	559
demurrer in, to be accompanied by certificate that it is not intended for delay,.....	559
answer to be on oath, unless waived,.....	559
cases in equity, and motions thereon, to be first heard by single judge,.....	559
rule days to be established for equity business,.....	560
court to be always open for hearings, making decrees, &c.,.....	560
cases in, to be entered with probate appeals on separate docket,.....	560

**EQUITY — continued.**

orders and decrees in equity by single judge to bear date of day when entered, and day to be noted by clerk,.....	560
process on final decrees of single judge not to issue until thirty days from entry thereof, unless waiver of adverse party is filed,.....	560
cases pending in one county may be heard in any other,.....	560
orders and decrees in such cases to be transmitted to, and entered by clerk in, proper county,.....	560
not to be made until notice given to adverse party or his counsel,.....	561
may be argued in writing in such cases, and proceedings thereon,.....	561
court may frame issues of fact for jury in supreme or superior court,.....	561
may issue writs of seisin or execution to enforce decrees,.....	561
one justice of court to be designated to attend in Boston, and hear equity cases at all times, and he may, by rescript, make decrees in any county,.....	561
papers in cases may be taken from files by counsel for use before court,.....	561
rules to be made for conducting business and regulating practice in equity,.....	561
single judge may, in cases heard for final decree, report evidence and reserve questions of law for full court,.....	560
evidence to be taken as in suits at law,.....	673
in appeals,.....	561
affidavits may be used in, as heretofore,.....	673
Appeal from final decree of single judge, and proceedings thereon,.....	560
testimony to be reported, and rules shall be made therefor,.....	561
no oral testimony to be heard before full court except in special cases,.....	561
in case of such appeal, all interlocutory orders may be revised,.....	560
single judge may make orders for appointment of receivers, of injunctions, or prohibition, until appeal is heard,.....	560
appeal from interlocutory decree may be had, and effect of,.....	560
case may be reported upon interlocutory questions for decision of full court,.....	560
when by accident appeals from final decrees are not duly entered, full court may within one year allow entry thereof,.....	559
Costs in, where discovery only, and not relief, are sought,.....	751, 752
where no special provision is made,.....	752
not to exceed similar charges in suits at law,.....	752

**IN SUPERIOR COURT.**

respecting waste and nuisance,.....	719, 721
for redemption of mortgages,.....	714
to determine rights of the several attaching creditors in certain cases,.....	630, 59

**PROBATE COURT.**

concerning trusts created by will,.....	59
---	----

**EQUITY OF REDEMPTION.**(See *Mortgages, Execution.*)**ERROR.**

in courts of inferior jurisdiction, how prevented and corrected by supreme court,.....	52
--	----



**ERROR—continued.**

circumstantial, not to abate writs, processes, &c., of courts,.....	657
Writ of, in civil cases, may be brought in supreme court,.....	558
to be indorsed before entry when all plaintiffs live out of state,.....	622
when indorser of may be required or changed after entry,.....	657
may be brought by administrator de bonis non, on judgment rendered by previous executor, &c.,.....	652
limitation of,.....	745, 746
not to stay execution, unless bond, with sureties, be given to defendant; condition of bond,.....	746
penal sum of such bond, and sufficiency of sureties, how determined,.....	746
bond to be filed in clerk's office, and execution stayed or superseded,.....	746
costs to be awarded to prevailing party,.....	746
what damages for delay shall be adjudged to defendant, if judgment is affirmed,.....	746
judgment not to be reversed for certain defects in form,.....	745
nor for not being in conformity with the allegations of the parties,.....	745
nor for error in law, except after verdict,.....	745
nor for mistake in the venue,.....	745
assignment of errors, &c., to be according to the common law, and usage in the state,.....	746
In criminal cases, may be brought at any time after judgment, and entered in any county,.....	746
case to be examined without delay, but examination may be adjourned,.....	746
shall not stay execution of sentence, unless allowed by a judge of supreme court, with an order for stay,.....	746
when stay of proceedings is ordered, judge may make orders as to custody of plaintiff in error, in letting him to bail,.....	746
shall not issue in capital cases, unless allowed by a judge of supreme court, after notice to attorney-general, &c.,.....	746
for errors apparent on the record, not prevented by proceedings on appeals, new trials, &c.,.....	844
when final judgment is reversed for error in sentence, court may render judgment, or remand the case for that purpose,.....	746
if defendant is discharged, the legal costs shall be borne by state,.....	746
In civil and criminal cases, not capital, may issue, of course, from supreme court,.....	745

**ESCAPE.**

of debtor arrested or committed on execution, remedy of creditor against officer or debtor,.....	641
from jail, &c., report of to be made,.....	866
from prison, penalty on persons aiding,.....	818
from officer, penalty on persons aiding,.....	818
penalty on officer voluntarily or negligently suffering, refusing to arrest or receive, &c.,.....	818
of offender from county where offence was committed, officer may pursue and arrest in any county,.....	831
of person sentenced for fines and costs, when sheriff to pay,.....	852

**ESCAPE—continued.**

by reason of insufficiency of jail, county to pay sheriff all money recovered of him for,.....	858
from jail or house of correction, how punished,.....	864
what removal, &c., of prisoners not to be deemed,.....	864
from state prison, how punished in different cases,.....	876
for aiding or suffering an escape,.....	876

**ESCHEAT.**

claims of commonwealth to property by, how prosecuted,.....	717, 718
---	----------

**ESTATES BY THE CURTESY.**

who entitled to,.....	471
title to, not affected by advancements,.....	475
not affected by right of married women to hold separate property,.....	538, 539

**ESTATES IN DOWER.**

provisions concerning,.....	469-471
how recovered by action,.....	697
(See Dower.)	

**ESTATES EXPECTANT.**

not to be defeated by alienation, &c., of owner of precedent estate, &c., except in cases of estates tail,.....	466
may be sold, subject to contingency,.....	472, 473

**ESTATES OF FREEHOLD.**

whether in fee simple, fee tail, or for life, may be recovered by writ of entry,.....	692
persons in possession of, how may compel adverse claimants to bring action to try title,.....	696
when leases are so considered,.....	690, 471

**ESTATES FOR LIFE.**

conveyance of,.....	466
not to be forfeited by conveyance purporting to grant greater estate,.....	466
execution, how levied on,.....	518
how redeemed when levy has been made on rents and profits,.....	621

**ESTATES AT SUFFERANCE.**

liability of tenant to pay rent,.....	471
---------------------------------------	-----

**ESTATES TAIL.**

may be barred by deed of tenant in tail, or of tenant for life and remainder-man in tail,.....	466
liable for debts of tenant in tail,.....	472
in remainder only, not liable for debts,.....	472
when taken on execution or sold by executors, &c., to be held in fee simple,.....	472, 517
remainders and reversions expectant on, barred where tenant's right of entry or action is barred by limitation,.....	776
Equitable, how may be conveyed and remainders and reversions barred, &c.,.....	466
grantee of, may obtain in equity conveyance of legal estate,.....	466

**ESTATES AT WILL.**

all interests in lands to be, if created or conveyed without writing,.....	466
how terminated,.....	472

**ESTATES FOR YEARS.**

not to be forfeited by conveyance purporting to grant greater estate,.....	466
--	-----

**ESTATES OF PERSONS DECEASED.**

Descent of real estate,.....	474, 475
Distribution of personal estate,.....	486
Insolvent estates,.....	497-500
How disposed of by will,.....	476-480
letters testamentary on,.....	481, 482
Administration of, how granted, &c.,.....	483
special, how granted, &c.,.....	484

ESTATES OF DECEASED, &c. — *continued.*

Executors in their own wrong,.....	486
Public administrators,.....	486, 488
Of persons not inhabitants of this state, administration and settlement of such es- tates,.....	508
real estate to descend according to laws of this state, personal, according to laws of their own country,.....	508
proceedings in case of insolvency of,.....	508

## GENERAL PROVISIONS.

subject to payment of deceased's debts,....	474, 476, 486
may be taken for deceased's debts on execution against executors,.....	523
may be redeemed as if taken during life,.....	523
after redemption not to be taken for other debts,....	524
to whom real estate shall descend,.....	474, 476
to whom personal estate shall be distribu- ted,.....	486
when to escheat to commonwealth,.....	486
inventory of, to be returned within three months by administrator, &c.,.....	488
when need not be returned,.....	488
Real, if undivided, to whom taxable,.....	76
title to which is in dispute, how taxable,.....	76
when personal is insufficient, may be sold to pay debts,.....	489
proceeds of such sale to be deemed personal estate,.....	489
mortgage of, in certain cases, to be deemed per- sonal assets,.....	489, 490
if redeemed by mortgagor, to be released by executor, &c.,.....	490
taken on execution, to be deemed personal assets,.....	490
held by executor, &c., may be sold,.....	490
and may be sold after foreclosure upon obtaining license,.....	490
if not so sold, how distributed,.....	490
sales of land by executors and administrators for payment of debts,.....	510, 511, 512
Personal, where and to whom taxable,.....	76
how may be collected,.....	83
to be accounted for at appraisal, unless, &c.,....	494
assets, what to be deemed,.....	489, 490
may be ordered by probate court to be sold,....	494
and if sold, executor, &c., to account for pro- ceeds,.....	494
expenses of funeral and last sickness, how paid from,.....	484, 486
when embezzlement from is suspected, judge may cite and examine suspected persons,.....	489
Notice of appointment of executor, &c., and payment of debts and lega- cies,.....	491, 492
notice to be given of taking administration,....	491
how evidence of, to be perpetuated,.....	491
when omitted by accident, &c., and when evidence is not perpetuated,.....	491
limitations of actions by creditors against executors and administrators,.....	491
proceedings when right of action accrues after two years,.....	491, 492
administrators de bonis non, appointment, liability, &c., of,.....	492
provisions not to bar actions against heirs,.....	492
debts may be paid after one year from notice of appointment by executor, if he has not notice of more demands than the assets will pay,.....	492

ESTATES OF DECEASED, &c. — *continued.*

when whole estate is thus paid out, executor, &c., not liable to other demands,.....	492
when property remaining after payment is in- sufficient to discharge new demands, it shall be distributed as in case of insolvent estates,.....	492
when estate is exhausted by charges of adminis- tration, allowance to widow, &c., ex- ecutor, &c., not liable to creditors,.....	492
when executor, &c., may demand security from legatees, &c., to refund,.....	492
legacy, &c., may be recovered by action at law with- out limitation,.....	492
annuity by will, when payable,.....	493
suits for, not to be brought against executor within one year after giving bond,.....	493
apportionment of annuity in certain cases,.....	493
liability of executors, &c., if they unnecessarily delay collection of debts, &c.,.....	493, 494
claims of executors, &c., may be submitted to arbi- tration,.....	494
or be decided by court or jury on appeal,.....	494
liability of estate of deceased joint debtor,.....	494
provisions in case of death, removal, &c., of ex- ecutors, &c.,.....	503, 504
Accounts and settlements, &c.,.....	494, 495
personal estate, how accounted for,.....	494
executors, &c., to be charged with increase and allowed for decrease of appraisal,.....	494
court may order sale of personal estate and out- standing claims,.....	494, 495
executors, &c., may transfer mortgages,.....	495
not chargeable with bad debts,.....	495
chargeable with certain effects not in in- ventory,.....	495
and with income of real estate, if re- ceived,.....	495
to render account within one year, and further accounts when required,.....	495
accounts may be allowed on oath of one only of joint executors, &c.,.....	494
how liable for not rendering accounts,.....	495
allowance to, for services,.....	495
accounts settled, in what cases may be opened,.....	495
costs recovered against executors, &c., how paid and allowed,.....	496
final discharge of executors, &c., and evidence thereof perpetuated,.....	494
money due, if not claimed, to be deposited, and how to be paid out afterwards,.....	494
claims may be compromised,.....	494
and certain interests in real and personal estate released,.....	494, 495
Bonds, provisions concerning by executors, ad- ministrators, &c., 491, 492, 496, 496, 506, 507	

## LIABILITY OF HEIRS, &amp;c., FOR DEBTS OF DECEASED

estate of deceased in hands of heirs, &c., liable for certain debts,.....	507
mode of proceeding in such case,.....	507
estates of heirs, &c., liable for such debts after death of heir, &c.,.....	507
if more than one is liable for debt, creditor may pro- ceed in equity,.....	507
case of insolvency of heir, &c.,.....	507
action not to be dismissed for not including all who might be defendants,.....	507
new defendants may be summoned in, and amend- ments allowed,.....	507

**ESTATES OF DECEASED, &c. — continued.**

heirs, &c., liable to contribution between themselves,..... 508

**EVIDENCE.**

no person to be excluded from giving, by reason of crime or interest,..... 678  
 nor by reason of non-belief in any religion,..... 678  
 but conviction of crime, and disbelief in the existence of God, may be shown to affect credibility,..... 678  
 parties may be witnesses, and their wives in certain cases,..... 678, 674  
 and their depositions may be taken,..... 678  
 of the truth of the matter may be given in evidence in justification by defendant in civil actions for libel and slander,..... 682  
 justifying in actions of slander and libel not proof of malice,..... 682  
 rules of, not changed by laws relating to pleading and practice,..... 683  
 declarations and other pleadings not to be,..... 681  
 offer of judgment not to be in certain cases,..... 681  
 answer of defendant on one matter not to be evidence against him upon issue joined on another matter in same answer,..... 682  
 of entry for breach of condition broken, and to foreclose a mortgage of real estate, how perpetuated,..... 712  
 of sales under mortgages of real estate with power of sale, how perpetuated,..... 716  
 of notice to foreclose mortgage of personal property,..... 756  
 copy of depositions to perpetuate testimony, when admissible,..... 678  
 assignment of an estate of an insolvent debtor conclusive of assignee's authority to sue,..... 587  
 what may be shown in certain cases of embezzlement,..... 800  
 what will not be a variance,..... 800  
 what need not be shown on trial of receivers of stolen goods, &c.,..... 801  
 on trial for fraudulent over issue of stock, or of false entries of transfers of, books themselves to be evidence,..... 802  
 in prosecutions for forgery or counterfeiting bank bills, or United States securities,..... 809  
 testimony of president and cashier, when may be dispensed with,..... 809  
 certificates under oath of secretary of the treasury admissible,..... 809  
 possessing and uttering a mutilated bank bill, when evidence of mutilation,..... 810  
 in case of malicious gathering up and retaining bank bills, each bill need not be proved,..... 810  
 in trials for lottery cases, defendant to prove genuineness of tickets sold by him,..... 824  
 by depositions, how taken,..... 674, 678  
 In equity, shall be taken as in actions at law,..... 678  
 but not orally before full court,..... 561  
 affidavits may be used as heretofore,..... 678  
 taken orally before a single judge, may be reported to full court,..... 561  
 or special reasons full court may allow other evidence to be taken,..... 561  
 Proof of statutes and laws,..... 678, 679  
 records and proceedings of courts of other states, how authenticated,..... 678  
 printed copies, published by authority, of acts and resolves of their state, to be admitted as sufficient,..... 678

**EVIDENCE — continued.**

of laws of other states, when to be sufficient,.... 678  
 unwritten law of other states and territories, how proved,..... 679  
 the existence, effect, and tenor of foreign laws, how proved,..... 679

**EXAMINATIONS.**

preliminary, of persons charged with offences,..... 882, 883  
 may be adjourned for not over ten days at one time,..... 882  
 of persons charged with threatening to commit offences,..... 827

**EXAMINERS.**

board of, in each county except Suffolk and Nantucket, of whom to consist,..... 149  
 to examine returns of votes for county commissioners,..... 60  
 when to meet for this purpose,..... 60  
 to notify person chosen,..... 60  
 to file returns, after examination, in clerk's office,..... 60  
 penalties for neglect of duty,..... 60  
 to examine and allow accounts of commissioners,..... 149  
 compensation of,..... 149

**EXCEPTIONS.****TAKING EXCEPTIONS, AND PROCEEDINGS BEFORE ENTRY THEREOF.**

may be taken, on motions for new trials, and in all cases, civil or criminal, by party aggrieved, by opinion, ruling, &c., of single judge of supreme or superior court in matters of law,..... 569  
 when trial by jury is waived, and case is heard by court,..... 671  
 in cases of information for intrusion,..... 713  
 in trials of libel for divorce,..... 583  
 to decisions on demurrers in certain cases,..... 681  
 by third parties, in certain cases, on adjudication, that an amendment is for same cause of action,..... 682, 683  
 to be reduced to writing in a summary mode, filed with clerk, notice given to adverse party, and presented to court within three days after verdict, and before adjournment of court,..... 566  
 further time may be allowed by court, not exceeding five days, unless by consent of adverse party,..... 566  
 on being examined and found correct, shall be allowed by judge,..... 566  
 adverse party to have an opportunity to be heard upon allowance of, in all cases,..... 566  
 to be restored to files of court within five days after being presented to judge, with his certificate allowing or disallowing same,..... 566  
 unless judge finds further time, not exceeding ten days, except for certain reasons necessary,..... 566, 567  
 reasons for delay in restoring of, to files, to be certified by judge,..... 566, 567  
 trial of fact, not to be prevented or delayed by allowance of,..... 567  
 unless adjudged frivolous, or intended for delay, no judgment to be entered,..... 567  
 if adjudged frivolous, &c., sentence may be passed, or judgment and execution awarded or stayed on terms, notwithstanding allowance of,..... 567

**EXCEPTIONS — continued.**

- If execution is not awarded, &c., security by bond, attachment, &c., to stand until final order is made, &c.,.....563, 567
- If judge disallows, fails to sign and return, or alters, either party aggrieved may establish truth of, before supreme court,..... 567
- In criminal cases, party filing may recognise to prosecute,..... 844
- failing to recognise, may be committed,..... 844
- may be taken in capital cases, and proceedings thereupon,..... 554

**ENTRY AND TRIAL OF IN SUPREME COURT.**

- full court to have jurisdiction to hear and determine all questions of law upon,.....553, 554
- taken in supreme or superior court, copies and papers relating to, must be transmitted within twenty days after adjournment of term, and entered on law docket of supreme court in proper county,..... 567
- copies of certain papers, when exceptions are taken in superior court, to be prepared and transmitted to supreme court, &c.,..... 553
- when entered in supreme judicial court for commonwealth, clerks of the courts for their respective counties to prepare proper papers,..... 557
- original papers needed in supreme court, how transmitted, &c.,..... 553
- if not entered, adverse party may make complaint, and have judgment, &c., affirmed,..... 555
- if by accident exceptions or complaints are not duly entered, court may, upon petition filed within one year, allow entry thereof,..... 555
- security discharged by non-entry of in due time, not revived by subsequent entry on leave,..... 555
- when disallowed, not signed, or altered, how questions may be entered, &c., in supreme court,..... 557
- rules to be made for settling truth of, in such cases,..... 567
- entry of, not to transfer case, but only question to be determined,..... 567
- proceedings upon hearing of, and rendering judgment in the case,.....554, 555, 557, 553, 567
- if adjudged frivolous, &c., upon final hearing, double costs and twelve per cent. interest may be awarded,..... 554
- court may affirm former judgment with additional damages, reverse the same in whole or in part, or enter other order, &c.,..... 554
- if judgment has been entered, where exceptions have been taken, full court may vacate same without writ of error, &c.,..... 554
- Entry of, &c., in supreme judicial court for commonwealth,..... 555, 558
- taken in counties of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, and Suffolk, to be entered in supreme court for commonwealth at Boston,..... 555, 558
- taken in counties of Berkshire, Franklin, Hampden, Hampshire, and Worcester, may, by consent of parties or order of judge, be entered in said court for commonwealth at Boston,..... 557

**EXCEPTIONS — continued.**

- order of entry of, in said court, from different counties, &c.,..... 557
- in criminal cases, to be entered on separate docket in said court,..... 557
- when to be in order for argument, &c.,..... 557
- Entry of, from superior court in counties of Berkshire, Franklin, Hampden, Hampshire, and Worcester,..... 558
- to be entered at next term of supreme court for proper county,..... 558
- or by consent or order of court may be entered in court for commonwealth at Boston,..... 557
- EXCHANGE, (see Bills of Exchange),.....256, 554, 556, 554**
- EXECUTION.**
- issued on judgments for damages awarded for sewage,..... 557
- what may be levied on, proceedings,..... 557
- on judgment for which debtor has been arrested and discharged, not to run against his body,.....557, 558
- when may be issued against absent defendants,.....555, 556, 557
- how issued in favor, and against executor, administrator, and the estate of the deceased,.....548, 551, 553
- how, for seisin in writ of entry, if either party dies after judgment for demandant,..... 555
- for collection of military fines,..... 115
- for assessments for support of paupers, may be issued against kindred,..... 32
- in suits on administration bonds, how awarded and served,.....558, 557
- against sheriff, to run against property only,..... 151
- alias, to run against body of sheriff, after removal from office,..... 151
- Forms of, to be as heretofore, unless altered by courts,.....555, 557
- alterations in, may be made by the courts when necessary,..... 557
- to be under final control of supreme court,..... 557
- to be same on judgments in civil actions in favor of state as those in favor of citizens,..... 557
- To be returnable, in all cases, in sixty days,..... 557
- In cases of seizure and libelling of seized goods,..... 111
- Upon recognizances for debts,..... 111
- may run into every county,..... 111
- not to issue after three years,..... 111
- when for twenty dollars or less, not to run against lands of conscience,..... 111
- when wrongfully issued, remedy may be by audita querela or otherwise, as when issued on a judgment,..... 111
- By a justice of the peace or police court, for damages exceeding twenty dollars, shall be so framed as to direct a levy on hands of the debtor,.....558, 557
- may run into any county for levy on equity of redemption,..... 111
- may be issued by justices of the peace after commission expires,..... 557
- Against executors and administrators, for deceased's debts, to run only against his property in their hands,..... 557
- for costs, only to run against their own goods and bodies,..... 557
- Not to issue, until twenty-four hours after judgment,..... 557

**EXECUTION — continued.**

not to issue against absent defendants until one year after judgment, unless bond is given.....	605, 646
on judgment appealed from, unless appeal is waived.....	668, 607
not to be taken out by demandant on writ of entry, on judgment for seisin, if there is judgment against him for balance due for improvements, until he has paid balance.....	694
original not to issue unless within one year after party is entitled to sue out same.....	686
writ of seisin on a writ of entry may, in certain cases, issue after a year.....	686
alias and other successive, not to issue unless within five years after return day of preceding.....	686
May be obtained on scire facias, after time for taking out executions, if judgment is unsatisfied.....	686
when property sold on preceding, was not liable therefor, and damages have been recovered of officer or creditor.....	686
when, after execution and levy are returned and recorded, it is ascertained that the property levied on cannot be held thereby.....	619
when an execution against a corporation has been satisfied in part by service on a member, and the property or damages are recovered back from creditor or officer.....	686
Recording of, in registry of deeds, when and how required when issued on judgment in a writ of entry for possession of land.....	690
Set-off of executions, when and how may be made.....	687

**LEVY AND SET-OFF ON REAL ESTATE.**

all real estate of debtors, including lands fraudulently conveyed, &c., may be levied on.....	616, 617
also all rights of entry into lands, and redeeming mortgaged lands.....	616
estates tall, which can be barred by the person entitled thereto, may be levied on, and with what effect.....	472, 617
levy to be considered as made when land is taken.....	619
estate levied on, to be appraised by three disinterested, &c., men, who shall be sworn.....	617
and described in all cases by metes and bounds or otherwise, so that it may be identified.....	617
after land is taken, notice to be given to debtor by officer, and reasonable time allowed for appointment of appraiser.....	619
such description may be in officer's return or certificate of appraisers.....	617
and contained in either, may be adopted or referred to in the other.....	617
appraisers, how appointed.....	617, 626
to be sworn before a justice of the peace or the officer.....	617
to proceed to view land with officer, and examine it so as to form estimate of value.....	617
certificate of appraisement, to be signed by, and indorsed on execution.....	617
dissent and refusal to sign by one of, not to vitiate levy, if he was sworn and acted with the others.....	617

**EXECUTION — continued.**

to value estate as fee simple in possession, unless indorsement on the execution describes it to be a less estate.....	617
may appraise several parcels of land, if levied on at same time, separately or together.....	617
same may appraise several parcels, when taken successively, or new may be appointed for each.....	617
land of banks taken on, may be sold at auction.....	808
what notice of sale of, to be given by the officer.....	808
sale of, may be adjourned seven days at a time.....	808
mortgaged to banks may be sold on execution.....	808
cashier, &c., in such case to furnish officer with copy of notice, &c.....	808
and officer, if requested, to file notice in registry of deeds.....	808
mortgages on real estate, held by insurance companies, may be sold on.....	822
directors of insurance companies neglecting to pay, &c., to be personally liable.....	827
against a corporation, stockholders whereof are liable for it, debts, how may be satisfied.....	840
seizure and sale of franchise of corporation.....	887, 888
how levy to be made on share of tenant in common, &c., or on mill, &c., that is not divisible, when debtor's interest is more than sufficient to satisfy, &c.....	617, 618
levy on undivided part of estate makes judgment debtor tenant in common with owner thereof.....	617, 618
passes all debtor's freehold estate, unless greater than in description.....	617
Estates for life, may be appraised and set off like other real estate, or rents and profits may be levied on.....	618
when rents and profits are levied on, their annual value to be estimated by appraisers.....	618
estate set off for such time as will satisfy demand, if life estate endures so long.....	618
method of computation in levies on rents and profits.....	618
Estates under lease to a third person, levy on binds lessee to pay rent wholly or in part to the creditor.....	618
what seisin, &c., of premises shall be delivered to creditor, &c., by officer in different cases.....	618
Return of execution and certificate of doings thereon, where to be made.....	618
what facts shall be set forth in the officer's return or certificate.....	619, 620
execution and return to be recorded in registry of deeds within three months of completion of levy.....	618
such record of justice's execution to be prima facie evidence of regularity.....	618
expense of record to be added to charge of levy.....	618
levy, if not so recorded, void as against attaching creditors and purchasers without notice.....	618, 619
though not so recorded until after three months, valid as against attachments and conveyances made afterwards.....	619
if void, creditor may waive it, if not returned and recorded.....	619

**EXECUTION — continued.**

- if returned and recorded, creditor may have alias execution on *scire facias*,..... 519
- proceedings in such case,..... 519
- how such estates may be redeemed,..... 520, 521

**SET-OFF, &C., OF MORTGAGED LANDS.**

- Rights of redeeming mortgaged estate may be set off on execution,..... 521
- and appraisers shall deduct encumbrance or mortgage, when known, from estimated value, and sum so deducted shall be stated in the return,..... 521
- when mortgage, &c., is not allowed for, creditor to hold premises, &c.,..... 521
- when such estates are set off, how may be redeemed,..... 521
- if mortgage is paid creditor, how may be redeemed,..... 521
- if not redeemed, creditor to hold premises,.... 521
- if right levied on is not redeemed within one year, creditor to hold premises,..... 521
- when lands are in different counties, may be set off by an officer of either county,..... 523

**SALE, &C., OF MORTGAGED LANDS.**

- Rights of redeeming mortgaged estate may be sold at auction if creditor so elects,..... 522
- what notice of sale shall be given by officer to debtor, and what notifications to be posted, &c.,..... 522
- sale may be adjourned, &c., and what notice to be given of adjournments,..... 522
- levy to take effect from time of giving notice, return may be completed afterwards,.... 522
- deed to be given to purchaser by officer, which must be recorded within three months,..... 522
- mortgaged estates so sold, may be redeemed by judgment debtor within one year,..... 522
- if mortgage is paid by purchaser, how redeemed by debtor,..... 522
- remedies of debtor for recovering right of redemption,..... 522, 523
- when lands are in different counties, may be sold by an officer of either county,..... 523

**LEVY ON PERSONAL PROPERTY.**

- may be levied on personal chattels,..... 687
- on coin, and the same paid to creditor,..... 687
- on bank notes, and other evidences of debt circulated as money,..... 687
- what personal property is exempt from,..... 688
- when ownership or liability of property to be taken is doubtful, officer may require indemnity,..... 688
- goods seized on, to be kept four days at least,..... 688
- if not redeemed, to be sold within fourteen days,..... 688
- Sale, notice of, how given,..... 688
- if value of goods exceeds three hundred dollars, shall be advertised at request of either party, and may be sold within thirty days,..... 688
- may be adjourned not more than seven days at a time,..... 688
- adjournment of, how notified,..... 688
- if bidder refuses to take and pay for any article, it may be re-sold within ten days,.... 688, 689
- loss on re-sale and damages recovered of bidder, to be applied in payment of execution,..... 688, 689

**EXECUTION — continued.**

- return of, by officer making sale, how made,.... 689
- officer committing fraud in sale or return on, liable to five times actual damages,..... 689
- money received from sale, how applied,..... 689
- how, when there are different attaching creditors, or seizure on different executions,..... 689
- when levied on shares in corporations, or other property not required to be removed, officer to notify officer previously attaching, levying on the same in certain cases,..... 689
- if, after sale, first officer pays over balance to debtor without such notice, he will not be liable on account of second attachment or levy,..... 689
- On shares in corporations,..... 689, 690
- may be levied on the shares of stockholders in any corporation in this state,..... 689
- if attached in same suit, to be seized and sold like other personal property,..... 689
- if not attached, officer to leave copy of execution with officer of corporation,..... 689
- shares considered as seized when copy is so left,..... 689
- recording officer of corporation to give officer exhibiting an execution certificate of number of debtor's shares,..... 689
- after sale, officer serving execution to leave with recording officer of corporation, within fourteen days, copy of execution and return,..... 689
- purchaser then entitled to certificate of shares purchased by him,..... 689
- entitled also to all dividends which accrued after attachment, if any in the suit,..... 689
- Levy on terms for years, levied on terms of one hundred or more, if fifty years thereof are unexpired, in like manner as on real estate,..... 690
- other terms for years to be levied on in like manner as personal estate, except debtor to have fourteen days' notice of sale,..... 690

**ARREST OF THE BODY ON.**

- when may be served by arrest of body,..... 694
- affidavit for, before what magistrate to be made, and what to contain,..... 694
- for costs, debtor may be arrested without affidavit,..... 694
- when attorneys at law may be arrested on execution recovered for money collected,..... 694
- arrest not to be made after sunset, without special authority from magistrate,..... 695
- how may be made when debtor has given special bond to jailer to surrender himself in thirty days,..... 695
- debtor, how discharged from,..... 695

**SPECIAL PROVISIONS.**

- if levy is on land, the record title to which is in name of other than debtor, &c., action for possession to be brought within one year,..... 525
- fees and charges of levy to be added to debt,..... 525
- proceedings by heirs, executors, &c., of debtors and creditors,..... 525
- right of redeeming land set off on one execution, may be taken and sold on another,..... 525
- land of deceased persons may be taken on,..... 525
- and may be redeemed as if taken during life time,..... 525, 526

**EXECUTION — continued.**

after redemption, not to be taken for other debts of deceased,.....	524
land may be taken on, in favor of executor,.....	524
dower in lands taken on,.....	524
lands taken on, in favor of state, to be sold at auction,.....	524
redemption of such lands,.....	524
homesteads, to the value of eight hundred dollars, exempt from levy on, &c.,.....	524
mode of levy when property in which homestead exists exceeds eight hundred dollars in value,.....	526
money collected on, if not paid over, officer liable to five times lawful interest,.....	601
Service of, when in the alternative, may be directed by the creditor,.....	687
to be on real or personal estate, as creditor directs,.....	687
may be finished by second officer if first dies or becomes unable,.....	690
certificate of proceedings, how to be made in such case,.....	690
may be finished by officer who begins, although removed from office,.....	690
begun before, may be completed after return day,.....	690
not affected by death of either party, after property is seized,.....	690
may be made on corporate property on execution, against corporation,.....	687
Suspension of levy on, how made by reason of prior attachment,.....	690
if in such case prior attachment is dissolved, or part of estate is set off or sold on, how long property to be held by seizure on subsequent levy,.....	690
Death of party or officer after commencement of levy, effect of,.....	690
Supersedeas of, in cases of review,.....	746
<b>EXECUTIVE DEPARTMENT OF THE GOVERNMENT.</b>	
not to exercise legislative or judicial powers,.....	17
<b>EXECUTIVE COUNCIL, (see Council,)</b> .....	28, 26, 36
<b>EXECUTORS.</b>	
to have letters testamentary when will is allowed,...	481
to give bond,.....	481
bond to be approved by judge of probate court,....	506
condition of bond,.....	481
condition when he is residuary legatee,.....	481
in such case, need not return inventory,.....	481
such bond not to discharge lien of creditors on real estate, except, &c.,.....	481
when exempted from giving bond for proceeds of sale of real estate,.....	506
when exempted from giving sureties on bond,...	481, 482
when new bond may be required of,.....	506
refusing to accept trust, &c., letters may be granted to other executors, &c.,.....	482
administration during minority of,.....	482
in certain cases, administration, with will annexed, to be committed to widow, &c.,.....	482
bond in such cases,.....	482
of an executor, not to administer estate of first testator,.....	482
to return inventory within three months,.....	488
need not return inventory, if they have given bond to pay debts, &c.,.....	488
may foreclose mortgage,.....	489, 490
to hold premises in trust until redeemed,.....	490
may sell real estate held in mortgage, or after foreclosure by obtaining license,.....	490

**EXECUTORS — continued.**

to give notice of appointment,.....	491
limitation of actions against, by creditors,.....	491
when assets are received after two years,.....	491
when action fails from defect in form, insufficient service, &c., new one may be commenced,.....	491
proceedings when right of action accrues after two years,.....	491, 492
not liable to actions within a year, except, &c.,....	492
when not liable for deficiency of assets,.....	492
may be discharged on proof of payment of whole estate, before notice of other demands,.....	492
and not required to represent estate insolvent,...	492
if he pays away part, and remainder of estate is insufficient to pay subsequent demands, to be liable only for part that remains,.....	492, 493
if there are two or more such demands, he may represent estate insolvent,.....	493
not liable to creditors when estate is exhausted by paying preferred debts,.....	493
when may demand security of legatee, &c., to refund,.....	493
suits against, for annuity, not to be brought within one year after giving bond,.....	493
liability of, in case of unnecessary delay to collect debts, &c.,.....	493, 494
claims of, &c., may be submitted to arbitration,....	494
or decided by court or jury on appeal,.....	494
to account for personal estate at appraisal,.....	494
to be charged with increase, and allowed for decrease, of appraisal,.....	494
upon petition of, court may order sale of personal property and outstanding claims,....	494, 495
may transfer mortgages,.....	495
not chargeable with bad debts,.....	495
chargeable with certain effects not in inventory,....	495
with income of real estate, if received,.....	495
to render account within one year, and further accounts when required by the court,....	495
how liable for not rendering accounts,.....	495
allowances to, for services,.....	495
costs recovered against, how paid and allowed,....	496
duties and liabilities of, when estate is insolvent,.....	496-499
may be sued after eighteen months, if question of insolvency of estate is not settled at that time,.....	499
penalty on, for neglect to settle accounts within six months of commissioners' return,.....	499
powers and duties of, as to redeeming lands of testator taken, &c., on execution,...	523, 524
of trustee not required to accept trust,.....	501
sales of land by, for payment of debts,.....	510-512
provisions common to sales of land by guardians, executors, and administrators,.....	514, 515
registers of probate and insolvency not to be in their county,.....	602
suits between co-executors and their representatives may be brought in equity in supreme court,.....	559
to pay in full judgment recovered for goods attached against the deceased as an officer,.....	648
may voluntarily take upon themselves the prosecution or defence of actions commenced by or against the deceased, 648, 649,	651, 652
or may be cited in,.....	648, 652

**EXECUTORS—continued.**

if they do not appear in such cases, judgment how entered,.....	648
may apply to county commissioners in cases where the deceased had a right of application and did not apply before his death,.....	650
in actions against, for tort committed by deceased, actual damages only to be recovered,.....	651
of a trustee, carrier, or depository, who recovers judgment for goods, or the value of goods belonging to others, not to take the same as assets of the estate, but to deliver them to the owner,.....	651
not to account for goods returned upon a judgment of return in replevin,.....	651
writ and execution against, on account of debts due by the deceased, not to run against their bodies nor their own estate,.....	651
personally liable for costs in actions commenced or prosecuted by themselves,.....	651
execution in such case to be awarded against their bodies and estate personally,.....	651
when judgment is for debt and cost, two executions to issue, one for costs against executor personally, and the other for debt against estate of deceased,.....	651
costs paid by, may be allowed in their accounts,....	651
scire facias may be sued out against, on suggestion of waste, when execution recovered against, for debt of deceased, has been returned unsatisfied,.....	651
may in such case be issued by justices of the peace,.....	606
by or against on judgments recovered for penalty of bond, covenant or agreement, against deceased, when there are subsequent breaches,.....	686
liable in such action for whole debt,.....	651
death of, not to abate suit commenced, but same may be prosecuted by administrator de bonis non,.....	648-652
dying after judgment by or against him, scire facias may be sued out by or against administrator de bonis non, and a new execution issued,.....	652
execution in such case, how to issue,.....	652
writ of error may be brought by administrator de bonis non on such judgments,.....	652
in actions by and against executors, how demands by and against the deceased may be set off,.....	670
may be prosecuted in actions for waste committed by deceased, whether actions are commenced before or after his death,.....	709
may tender sums due on mortgages, of which their deceased owned right of redemption, and bring or prosecute suits for redemption,.....	715
shall acknowledge satisfaction, or give release when an execution for possession on a mortgage has been levied, and subsequently paid,.....	715

**EXECUTORS—continued.**

liable to be summoned as trustees on account of debts, legacies, and effects in their hands,.....	728
how, in cases where deceased was summoned as trustee while living,.....	728, 729
to scire facias on judgment in trustee process, in certain cases,.....	728
In their own wrong, when to be regarded as, and liability of,.....	485
how far liable to rightful executor,.....	485
not allowed to retain or deduct effects, except, &c.,.....	485

**DEATH, REMOVAL, &c., OF EXECUTOR.**

upon death of, administrator de bonis non to be granted,.....	508
may be removed by probate court for cause, and if sole, new one appointed,.....	503, 504
acts of, before removal, to be valid,.....	504
marriage of executrix extinguishes her authority to act,.....	504
if there is no other executor, &c., court to appoint,.....	504
may resign by leave of court,.....	504

**ACCOUNTS, DISCHARGES, COMPROMISES, AND RELEASES.**

joint accounts of, may be allowed on oath of one,.....	504
final discharge of, when to be given and recorded, and effect of,.....	504
how to dispose of money not claimed within six months after decree of payment,.....	504
may be authorized by court to adjust claims by compromise,.....	504
and to release certain interests in estates represented by them,.....	506
provisions concerning suits on bonds,.....	506-507

**EXECUTORY DEVEISE.**

when estate may be sold subject to contingency of,.....	472, 473
---	----------

**EXHIBITIONS.**

provisions concerning,.....	463
(See <i>Theatrical Exhibitions</i> .)	

**EXPECTANCY.**

estates in, not to be defeated by alienation, &c., of owner of precedent estate, &c., except in cases of estates tail,.....	478
may be sold, subject to contingency,.....	472, 473

**EXPLOSIVE SUBSTANCES.**

regulations concerning sale, &c., of,.....	460, 461
--	----------

**EX POST FACTO LAW.**

not to be passed,.....	5, 16
------------------------	-------

**EXPRESS REPEAL.**

of enumerated acts, by General Statutes,.....	89
---	----

**EXTINGUISHMENT.**

of fires, provisions concerning,.....	174-175
towns and cities may use water from aqueducts for,.....	174, 175
penalty for wilfully obstructing,.....	734, 735

**EXTORTION.**

of money by threats, attempts at, how punished,.....	73
by taking illegal fees, how punished,.....	74



## F.

**FACTOR.**

- in possession of merchandise, to be deemed owner thereof, for purpose of making sale,..... 294
- contracts or pledges by, concerning merchandise, &c., in his possession, to be binding,..... 294
- lien of, for expenses and charges, not affected by these provisions,..... 295
- penalty on, for fraudulently pledging or disposing of property intrusted to him, &c.,..... 308

**FAIRHAVEN.**

- land in, ceded to United States,..... 45
- harbor, penalty for boarding vessels in, without leave, except, by pilots, &c.,..... 290
- what to be deemed limits of, for certain purposes,..... 290
- penalty for taking certain fish in, by persons living out of state,..... 431

**FALL RIVER.**

- harbor of, penalty for boarding vessels in, without leave, except by pilot,..... 290
- what to be deemed limits of, for certain purposes,..... 290

**FALMOUTH.**

- lands in, ceded to United States,..... 44, 45

**FALSE IMPRISONMENT.**

- actions for damages for, to be brought within two years,..... 777

**FALSE PRETENCES, TOKENS, &c.**

- jurisdiction of offences of obtaining property by, given to justices of the peace, &c.,..... 570
- obtaining property by designedly false intent, how punished,..... 802
- signature to certain written instruments,..... 802
- representations as to purchaser's means or ability to pay, must be in writing, &c.,..... 802

**FALSELY ASSUMING.**

- to be a justice, sheriff, &c., how punished,..... 814

**FALSELY PERSONATING ANOTHER.**

- and thereby obtaining property, to be deemed simple larceny,..... 802

**FARMERS' CLUBS.**

- properly organised, &c, to receive state publications from secretary of board of agriculture,..... 378
- securing such benefits, to make annual returns to secretary of board,..... 379

**FARMING UTENSILS.**

- exempted from taxation,..... 74

**FAST DAY.**

- legislature not to sit for ordinary business, and public offices to be closed,..... 49
- courts not to be opened, except, &c.,..... 617, 618
- bills of exchange, &c., maturing on, when payable,..... 293

**FATHER.**

- retains the common law right to assign his minor child's services,..... 551
- to support his poor children and grandchildren,..... 392, 545, 546
- may appoint, by will, a guardian for his minor children,..... 543
- of bastard child, liability of, &c.,..... 405
- when to inherit children's property,..... 474
- if competent, shall have custody and tuition of

**FATHER — continued.**

- his minor children under guardianship of others,..... 543
- rights of, how affected by adoption of children,..... 547, 548

**FEATHERS.**

- not to be sold by pedlars, &c.,..... 282

**FEBRUARY, TWENTY-SECOND.**

- legislature not to sit for ordinary business, and public offices to be closed,..... 49
- courts not to be opened, except, &c.,..... 617, 618
- bills of exchange, &c., maturing on, when payable,..... 293

**FEES.**

- of officers and jurors in jury trials before justices of the peace, &c.,..... 603, 607
- of magistrates and jailers in cases of poor debtors arrested or committed on meane process and execution,..... 641
- for approving bail bonds,..... 642
- of court and messenger in cases of insolvent debtors,..... 600
- how paid, accounted for, &c.,..... 600
- in cases, before police courts, how made up, taxed, certified, paid, and accounted for,..... 572-574
- for copies to be indorsed thereon,..... 572
- of sheriffs, witnesses, &c., taxed and allowed before justices of peace and remaining in their hands three years, to be accounted for, and paid to county treasurer,..... 610
- not to be received by judges and registers of probate and insolvency,..... 604
- extorting illegal, how punished,..... 814
- specific account of fees received to be given when required,..... 788
- penalty for refusal or neglect so to do,..... 788
- of officer serving process to be indorsed on writ, &c.,..... 788
- otherwise shall not be allowed,..... 788
- Of appraisers,..... 786, 787
- Clerks of the courts,..... 563, 612, 784, 785
- how to be accounted for,..... 614
- for recording attachments,..... 626, 627
- Commissioners,..... 786, 787
- Constables,..... 786
- when not entitled to witness fees in criminal cases,..... 786
- Coroners,..... 786
- when not entitled to witness fees in criminal cases,..... 786
- Jailers in the county of Suffolk,..... 786
- Jurors,..... 786
- Justices of the peace,..... 783, 784, 787
- when two or more are required to attend, what each entitled to,..... 784
- district-attorney may disallow in criminal cases, when, &c.,..... 788
- and police courts for discharging poor convicts,..... 879
- appellant in criminal cases not required to advance,..... 843
- when not allowed for issuing warrants in criminal cases,..... 570, 608
- Ministers, for marriages,..... 787
- Notaries public,..... 787
- Registers of deeds,..... 787

**FEES—continued.**

Secretary of the commonwealth,.....	787
Sheriffs and their deputies,.....	786
when not entitled to fees as witness in criminal cases,.....	786
Town clerks,.....	787
for recording mortgages of personal property,.....	787
Witnesses,.....	786
to certify in writing amount of travel and attendance,.....	786
in contested elections, committee must certify there was reasonable cause for attendance,.....	787
in criminal cases, when to be apportioned,.....	788
when not to be allowed,.....	788
provisions as to witnesses' certificates,.....	788
officers not to be interested therein,.....	788
Of recording officers, in cases not expressly provided for,.....	788
word "page" defined,.....	788
printed or written list of fees to be posted up in public office,.....	788

**FELONY.**

no person to be declared guilty of, by legislature,.....	16
assaults with intent to commit, how punished,.....	798, 794
what crime shall be deemed,.....	826
indictments for, not to be invalid by omission of certain words,.....	826
accessories before the fact to, punishable as principals,.....	826, 826
when, how, and where to be tried,.....	826
accessories after the fact to, who shall be deemed, and how punished,.....	826
when, where, and how to be tried,.....	826
attempts to commit, how punishable,.....	826
no person indicted for, shall be tried unless personally present,.....	841
when persons indicted for, are convicted of part of charge and acquitted of residue, how to be sentenced,.....	842

**FEMALE.**

discharged from custody of guardian upon marriage,.....	546
marriage of, extinguishes her authority as executrix, administratrix, and guardian,.....	504, 546
unmarried, or minor, whose father is deceased, property of, exempted from taxation,.....	74
not to be arrested on civil process except for tort,...	684

**FEMALE CONVICT.**

not to be sent to state prison,.....	845, 846
sentence of, with nursing infant,.....	845
may be transferred to workhouse, if in state of pregnancy,.....	859
county to pay two dollars a week for her support,.....	859
if mother of a child under eighteen months of age, when may have custody of it,.....	861
not to be kept in same room with male prisoners,.....	862

**FEME COVERT. (See Married Women.)****FENCE.**

across highways, &c., how may be removed, &c.,...	251
when not to be removed,.....	246
when adjudged nuisance, and taken down, costs, how paid,.....	251
when to be deemed boundaries of highways,.....	251
what to be legal and sufficient,.....	182
Partition, to be maintained equally, by adjoining occupants of land,.....	182

**FENCE—continued.**

proceedings, when party neglects to repair, &c.,.....	182, 183
when repaired by one not the owner, expense, how recovered,.....	183
controversies concerning, how determined,.....	183
assignment of shares in, made by fence viewers, to be recorded,.....	183
to be binding upon occupants and their successors,.....	183
agreement respecting, when so recorded, to bind owners and heir forever, unless, &c.,.....	184
if party neglects to maintain part assigned to him, aggrieved party may maintain and recover double damages,.....	183
compensation may be allowed for building, &c., more than just share of,.....	183
to be maintained throughout the year, unless, &c.,.....	183
when lands are bounded by water,.....	183
when lands have been occupied in common,.....	183, 184
owner exempted from maintaining, by laying lands in common,.....	184
not to be removed on laying lands in common, if, &c.,.....	184
how to be paid for, when unenclosed land is fenced,.....	184
Water fences, how to be made, &c.,.....	184
of general fields,.....	392
penalty for wilfully injuring, &c.,.....	306, 306

**FENCE VIEWERS.**

two or more to be chosen at town meeting,.....	160
to be sworn,.....	161
to survey and direct repair, &c., of partition fences,.....	182, 183
to give notice to delinquents if fences are deficient,.....	182, 183
may assign shares in partition fences, and direct time for making repairs,.....	183
assignment to be recorded in town clerk's office,.....	183
may order compensation for repairing, &c., more than just share of fence,.....	183
may determine where fences shall be placed when lands are bounded by water,.....	183
may divide or assign fences where land has been unenclosed, &c.,.....	183, 184
may determine what one occupant shall pay another for fence in certain cases,.....	184
when to be taken from different towns to decide concerning fences,.....	184
penalty on, for neglect of duty,.....	184
fees of, and how recovered,.....	184

**FERRY.**

not to be kept, and pay taken, without license from county commissioners,.....	232
* license for, may be revoked by commissioners,.....	232
tolls at, to be established by commissioners,.....	232
certain ferries exempted from these conditions,.....	232
penalty for keeping, without authority,.....	232
may be established by commissioners where they judge necessary,.....	232
when towns to maintain such ferry,.....	232
when two towns to maintain,.....	232
penalty on towns for neglect in such cases,.....	232

**FERRYMEN.**

on a post road, exempted from military duty,.....	232
to be licensed by county commissioners,.....	232
to give bond,.....	232
to keep safe boats, &c.,.....	232

**FERRYMEN — continued.**

to give ready attendance on passengers on all occasions,.....	253
penalty on, for want of such boats and attendance,.....	253
liability on bond for injuries caused by negligence,.....	253
action on bond, how brought,.....	253
when exempt from serving as jurors,.....	680

**FICTITIOUS NAMES.**

may be inserted in writs against defendants unknown,.....	622
---	-----

**FIDDLERS, COMMON.**

how punished,.....	820, 821
--------------------	----------

**FIDUCIARY DEBTS.**

not barred by discharge in insolvency,.....	592
---	-----

**FIELD DRIVERS.**

to be chosen at annual town meeting,.....	180
to be sworn,.....	181
to take up, &c., and impound cattle, sheep, &c., going at large contrary to law,.....	186
may retake, within seven days, beasts that escape or are rescued,.....	186
entitled to recover fees by action, if cattle go at large on Lord's day,.....	186
fees of, for distraining beasts,.....	186

**FIGHTING.**

birds or animals, penalty for exhibition of,.....	464
penalty for being present at such exhibition,.....	464

**FINAL JUDGMENT.**

what intended, when attachment, &c., is affected thereby,.....	556, 568, 567, 625
--	--------------------

**FINANCE.**

public officers and boards to make and submit estimates to speaker of house of expenditures required in their departments,....	139
officers disbursing money to make annual report to auditor,.....	139
money to be paid from treasury only upon warrant of governor, under appropriation of legislature, except, &c.,.....	24, 139
principal and interest of public debt to be paid when due,.....	139
no warrant to be drawn for payment of any account unless certified by auditor, except, &c.,.....	139
balances of appropriations may be paid in succeeding year, but not afterwards,.....	139
payments to be withheld from persons having unadjusted accounts with state,.....	139
to be made from ordinary revenue, unless otherwise provided,.....	139
cash on hand at beginning of year to be carried to account of ordinary revenue of that year,.....	139
notes for money borrowed in anticipation of revenue, how signed, countersigned, &c.,.....	139, 140
interest on temporary loans to be paid semi-annually,.....	140
accounts of expenditures, &c., incurred by order of either branch of legislature, to be approved by presiding officer, and audited by auditor, &c.,.....	140
such orders not to exceed one hundred dollars, without a specific appropriation previously made,.....	140
"incidental expenses" in appropriation bills, to include postage, printing, and stationery,.....	140
less appropriation to supersede former larger appropriation for same object,.....	140

83\*

**FINANCE — continued.**

public officers, duties of, in making purchases and incurring liabilities for state,.....	140
state not liable for acts of, beyond amount appropriated,.....	140
may continue expenditures during January, until will of legislature is expressed,.....	140
to incur no new expense, unless sufficient appropriation has been made therefor,.....	140
permanent improvements not to be made upon public buildings without appropriation, &c.,.....	140
bills against state exceeding fifty dollars, except for salaries, &c., to be sworn to,.....	140
original bills of articles purchased, &c., for state, to be delivered to auditor,.....	140, 141
committee of legislature not to incur liability after close of session, without appropriation,.....	141
appropriations for witness fees may be applied to taking depositions,.....	141
compensation of committees of legislature, commissioners, &c., to be fixed by governor and council,.....	141
travelling expenses of commissioners, &c., not to exceed three and a half cents a mile,.....	141
bills of charges to contain items,.....	141
secretary, treasurer, auditor, &c., to report to legislature, annually, expenses of office, &c.,.....	141
appropriations for state prison, how drawn, &c.,.....	870
salaries to be paid quarterly, and to be in full for all services,.....	140
to be paid only for time of actual service,.....	140
when diminished, to be paid at that rate, notwithstanding larger appropriations,.....	140
but one to be received by same person at same time,.....	140
of justices of supreme judicial court and governor to be paid without appropriation therefor,.....	139

**FINES.**

excessive, not to be imposed,.....	9, 16
half of, for keeping, &c., obscene books, to go to prosecutor,.....	819
how received and accounted for in cases before police courts,.....	572
in cases before justices of the peace,.....	610
on common carriers of passengers for loss of life of passenger by gross negligence, how recovered and to whom paid,.....	794
to be paid into state treasury, where no other provision is made,.....	851
to be prosecuted and recovered by indictment,.....	851
when not exceeding one hundred dollars, by complaint before a police court,.....	851
when not over fifty dollars, by complaint before a justice of the peace,.....	851
may be recovered in an action of tort,.....	851
justices of the peace to make return to secretary of state of fines recovered before them,.....	851
fines and forfeitures to be certified by clerk, and paid to sheriff,.....	852
sheriff to pay them to county treasurer within one month,.....	852
liability of sheriff-neglecting to pay,.....	852
payment to jailer, &c., to be deemed legal,.....	852
sheriff suffering an escape of person under sentence, to pay fines as if he had received them,.....	852
discharge of poor convicts for non-payment of,.....	878, 879

**FIREARMS.**

provisions concerning proof of, ..... 260  
*(See Arms.)*

**FIRE DEPARTMENTS.**

may be established in any town by selectmen, ..... 178  
 how organized, ..... 178  
 members of, when exempt from military duty, ..... 98  
 when exempt from serving as jurors, ..... 680  
 engineers, how appointed and vacancies filled, ..... 178  
 tenure of office, ..... 178  
 organization of, ..... 179  
 to have powers of firewards, ..... 179  
 to appoint enginemen, ..... 179  
 number of such enginemen to each engine, ..... 179  
 enginemen to have same privileges, &c., as when appointed by selectmen, ..... 179  
 to approve of organization, &c., of enginemen, ..... 179  
 to have care of engines, &c., ..... 179  
 may make alterations and repairs on engines, ..... 179  
 may make rules, &c., as to carrying fire, &c., in the streets, ..... 179  
 general powers of, as to preventing fires, ..... 179  
 future acts establishing, not to take effect until accepted by town, ..... 179  
 Fire districts may be established in villages, &c., containing one thousand inhabitants, if town refuse to establish, ..... 180  
 proceedings for organizing district, and establishing fire department, ..... 180  
 meetings of fire district, how called and conducted, ..... 180  
 engineer and assistants to be chosen by district, and sworn, ..... 180  
 engineers may make rules, &c., as to carrying fire, &c., in the streets, ..... 180  
 may appoint and remove enginemen, &c., ..... 180, 181  
 to have powers of firewards in district, ..... 181  
 liability of district for acts done by, ..... 181  
 enginemen to have same privileges as in towns, ..... 181  
 compensation of, ..... 181  
 districts may raise money for purchase of engines, &c., ..... 181  
 to choose prudential committee, to have charge of money, &c., ..... 181  
 assessment and collection of money voted by, ..... 181  
 by-laws, &c., adopted by, to be approved by superior court, ..... 181  
 penalties, how recovered, ..... 181  
 no inhabitant disqualified to act as magistrate in suit for penalty, ..... 181  
 may annex or exclude particular persons or estates, ..... 181

**FIRE CLUBS.**

when not to be established without permission of selectmen, &c., ..... 181, 182  
 penalty for joining club existing without permission, ..... 182

**FIRE-PROOF OFFICES.**

to be provided by counties, ..... 144, 198  
 county records, &c., to be kept therein, ..... 198

**FIRE-PROOF SAFES.**

to be provided by cities and towns, ..... 198  
 records to be kept therein, ..... 198

**FIRES.**

duties of firewards, &c., at, ..... 176  
 towns may use water of aqueduct corporations for extinguishment of, ..... 875, 876

**FIRES — continued.**

embezzling or concealing property at, deemed larceny, ..... 177  
 stealing property removed in consequence of, how punished, ..... 177  
 wilfully obstructing the extinguishment of, how punished, ..... 796, 797  
 giving false alarms of, how punished, ..... 516

**FIREWARDS.**

may be chosen by towns at annual meeting, ..... 178  
 in cities by city councils, ..... 178  
 to have immediate notice of election, ..... 178  
 penalty for not giving notice of acceptance or refusal within three days, ..... 178  
 to repair to fire and carry badge of office, ..... 178  
 may order buildings to be pulled down at fire, ..... 178  
 if no firewards present, selectmen, &c., may make same order, ..... 178  
 owners when indemnified in such cases, ..... 178  
 may require assistance at fires, ..... 178  
 may suppress tumults and disorders, ..... 178  
 may direct operations of enginemen and others, ..... 178  
 penalty for refusing to obey orders of, ..... 177

**FIREWORKS.**

penalty for selling, &c., without license, ..... 460

**FISH.**

Inspector-general of, how appointed and term of office, ..... 258  
 to be sworn, ..... 258  
 to give bond, ..... 261  
 to make return of quantity, &c., of fish inspected by himself and deputies, ..... 258, 261  
 may appoint deputies, who shall give bond and be sworn, ..... 258, 261  
 to be responsible for his deputies, ..... 261  
 together with deputies to inspect all fish, &c., ..... 261  
 penalty on, for neglect of duty, ..... 261  
 may seize, &c., fish sold without inspection, ..... 261  
 penalty on, for branding, &c., without inspection, ..... 261  
 proportion of deputies' fees, to be paid to, ..... 261  
 Pickled, how prepared, packed, and branded, ..... 261  
 sorts and denominations of, and how branded, ..... 261, 263  
 different qualities of mackerel, salmon, and shad, ..... 261, 263  
 casks to be filled with same kind of, ..... 263  
 penalty for intermixing, &c., contents of inspected casks, ..... 263  
 casks of, how branded with inspector's name, &c., ..... 263  
 of foreign catch, subject to duty, to be branded "foreign," ..... 263  
 if inspected where packed, need not be re-inspected, ..... 263  
 small fish, how packed, branded, &c., ..... 263  
 casks used for packing, quality and size of, ..... 262, 263  
 to be strictly examined by inspectors, ..... 263  
 fees for inspecting, ..... 263  
 Alewives, &c., how prepared and packed, ..... 263  
 how sorted and numbered, ..... 263  
 boxes for, quality and capacity of, ..... 263  
 how branded, ..... 263  
 fees for inspecting, packing, and branding, ..... 263  
 not to be exported unless inspected and branded, under penalty, ..... 263  
 may be exported, if inspected in another state, ..... 263  
 inferior quality not to be substituted for, after inspection, under penalty, ..... 264

**FISH—continued.**

Alewives, when sold, &c., without inspection, shall be forfeited,.....	264
Clam bait, weight of barrel of,.....	264
expense of weighing, by whom paid,.....	264
penalty on master of vessel for lading uninspected fish,.....	264
for selling tainted fish for food,.....	264
weight of quintal,.....	264
regulations concerning the taking of certain kinds of,.....	431, 432
penalty for destroying with Indian cockle, &c.,.....	431
unlawfully taking pickerel and trout,.....	431
prosecutions therefor limited,.....	431

**FISHERMEN.**

boats, fishing tackle, and nets of, &c. value of one hundred dollars, exempt from levy on execution and from attachment,.....	624, 625
---	----------

**FISHING TACKLE.**

what, exempt from attachment and levy on execution,.....	624, 638
--	----------

**FIXTURES.**

what, exempt from attachment and levy on execution,.....	624, 638
--	----------

**FLAGMEN.**

when to be stationed at railroad crossings,.....	361
--	-----

**FLASHBOARDS.**

wilfully injuring, how punished,.....	804
---------------------------------------	-----

**FLOATING LOGS, MASTS, &c.**

provisions respecting,.....	424
-----------------------------	-----

**FLOWING LANDS.**

complaints for, to be brought in superior court,.....	562
damages, how recovered for,.....	766-769

(See *Mills*.)

**FLUMES.**

wilfully injuring, how punished,.....	804
---------------------------------------	-----

**FOLLOWING SECTION.**

how construed, when used in these statutes,.....	51
--	----

**FOOD.**

fraudulently adulterating substances intended for,.....	822
articles adulterated to be forfeited and destroyed,.....	822

**FORCIBLE ENTRY AND DETAINER.**

entry into lands to be made only where allowed by law, and to be peaceable,.....	707
when forcibly made, or forcible possession of estate is held unlawfully by force, owner may have process for restitution,.....	707
so when a person holds after the termination of a lease,.....	707
so when a lease is terminated by notice to quit for non-payment of rent, unless tenant tenders the rent due, &c., four days before the return day of the writ,.....	707
so when lessee or tenant uses the premises for certain nuisances and illegal purposes,.....	454
restitution not to be made if defendant, or those under whom he claims, has been in possession three years, unless his estate is ended,.....	707
person entitled to possession in above cases may sue out a writ from police court or justice of the peace,.....	707
writ in such case, form of, and what shall be returned therein,.....	707
service of, how made,.....	707
may be made by constable,.....	164
if it appears by default or on trial that plaintiff is entitled to possession, judgment to be	

**FORCIBLE ENTRY, &c.—continued.**

rendered therefor and for debt and costs,.....	707
if plaintiff becomes nonsuit, or fails to prove his right, defendant to have judgment and execution for costs,.....	707
if plaintiff claims rent, and defendant appeals, he shall recognise to enter action, to pay all rent then due, &c.,.....	708
on final judgment for plaintiff, he may recover by scire facias, or contract, all sums for rents, damages, and costs,.....	708
if title to real estate is in question, how case may be removed to superior court,.....	606
if defendant remove case to superior court on frivolous suggestion of title, liable for double rent in certain cases,.....	708
judgment in, no bar to future action to recover premises, or damages for trespass, but amount recovered for rent may be set off,.....	708

**FORECLOSURE OF MORTGAGES.**

of real estate, provisions concerning,.....	712, 713
of personal property, provisions concerning,.....	767

**FOREIGN.**

the word, applied to insurance companies not incorporated by legislature of Massachusetts,.....	332
Ships and vessels, not affected by state laws respecting liens,.....	769
Corporations, how liable to action, &c.,.....	386

**FOREIGN LAWS.**

existence, tenor, and effect of, may be proved by parol evidence,.....	679
if written, courts may require copy of, as evidence,.....	679

**FOREMEN.**

of enginemen, how chosen, &c.,.....	177
of trial jurors,.....	682
of grand jurors,.....	337, 338

**FORFEITED GOODS.**

may be seized by persons entitled to recover them, when no special provision is made,.....	772
person seizing, to apply immediately (unless a claimant applies) to a justice for appointment of appraisers,.....	774
appraisers to be appointed by such justice; to be sworn, and return an inventory and appraisal,.....	774
if appraisers, appointed on application of person seizing, certify that the goods are perishable, &c., any justice may order sale thereof,.....	774
such appraisal to be conclusive as to jurisdiction of the court, before which suit is to be brought, unless different appraisal is made by claimant,.....	774
if claimant applies, before libel is filed, for appraisers, their appraisal to be conclusive, &c.,.....	774
person seizing, to file a libel within fourteen days, stating the cause of seizure, and praying for a decree of forfeiture,.....	772
libel of, may be general; form of,.....	772
to be filed in clerk's office of superior court, when value of goods is more than twenty dollars,.....	772
before a justice of police court, if goods are of less value,.....	772

**FORFEITED GOODS—continued.**

- how notice of libel shall be given when filed in clerk's office, ..... 772, 778
- when filed before a justice of police court, ..... 778
- if no claimant appears, court shall hear and determine the cause, &c., ..... 778
- if claimant appears, he may plead any proper matter of defence, ..... 778
- proceedings to be according to course of the civil law, except that questions of fact shall be tried by a jury, ..... 778
- depositions may be used, as in trials of actions at common law, ..... 778
- if libellant maintain his suit, court shall order sale of the goods and legal disposition of the proceeds, ..... 778
- discontinue or fail to maintain his suit, claimant to have restitution, ..... 772
- costs, charges of keeping, &c., processes, &c., to be within the power and control of the court, ..... 778
- court may order sale of the goods, for sufficient cause, during pendency of suit, ..... 774
- appeal from superior court, or from a justice, &c., may be taken by either party, ..... 778
- claimant shall have damages and costs, if jury find that the seizure was groundless, &c., ..... 778
- entitled to a delivery of the goods, on giving bond to restore, pay appraised value, if, &c., and perform final decree, ..... 778, 774
- value of the goods in such case to be determined by three sworn appraisers; how appraisers appointed, ..... 774

**FORFEITURE.**

- of estates, when limitation to rights of entry or action commence to run, ..... 776

**FORFEITURES.**

- actions for, to be brought in counties where offences are committed, ..... 621
- on trial of indictments, or penal suits for, jurors not disqualified on account of paying taxes in county, town, &c., ..... 688
- on penal statutes, suit for, to be brought in one year, if forfeiture is given to private persons, ..... 779
- in two years, if given in whole or in part to the commonwealth, ..... 779
- for burning coal pits on certain woodlands in portions of Bristol and Plymouth counties, how recovered, ..... 807
- for burning brush wood so as to set fire to such woodland, ..... 807
- incurred under acts hereby repealed, not affected by the repeal except where mitigated by new provisions, ..... 880
- accruing to any person, may be paid to him, if penalty of recognizance is forfeited or paid, ..... 848
- by constable, or juror, in regard to coroners' inquests, ..... 848
- by jailers, &c., for failing to keep prison book, ..... 886
- overseers, &c., of jails, &c., for failing to make official returns, ..... 888

(See Fines.)

**FORGERY.**

- of records, wills, deeds, contracts, receipts, &c., how punished, ..... 807
- for uttering such forged records, &c., as true, ..... 807
- of notes, &c., issued by the treasurer of the state, ..... 808
- of bank bills, or notes, ..... 808

**FORGERY—continued.**

- having ten or more forged notes, &c., in possession, with intent to pass, ..... 806
- uttering forged notes as true, ..... 806
- common utterer of forged bills, who deemed, and how punished, ..... 806
- effect of second conviction, and three convictions at same term, ..... 806
- bringing into state, or having in possession forged bill, &c., with intent to pass, ..... 806
- engraving plates, &c., or making paper, &c., for forging bills, &c., ..... 806
- having such plates, &c., and paper, &c., in possession, ..... 806, 808
- in prosecutions for forgery, &c., of bank bills, when testimony of president and cashier may be dispensed with, ..... 806
- how bills may be shown to be forged, ..... 806
- in prosecutions for forging, &c., United States securities, how securities may be shown to be forged, ..... 806
- affixing fictitious signatures of officers of corporations, &c., deemed forgery, though such persons never existed, ..... 806
- intent to defraud, how may be alleged and proved, ..... 806
- what shall not be a variance, ..... 806
- fraudulently connecting parts of bank notes, ..... 810
- Sheriff, to seize forged bank bills and plates, tools, &c., and the court shall order them to be destroyed, ..... 811
- Recompense, to prosecutors of forgers and forgery, ..... 811

**FORGING.**

- private labels, stamps, and trade marks, how punished, ..... 802
- selling goods knowingly with such marks, and not disclosing to purchaser, ..... 802

**FORM.**

- defect of, not to abate writs and processes in courts of justice, ..... 657
- of declarations, answers, &c., in civil cases, ..... 663-669
- of complaints, &c., under laws relating to sale, &c., of intoxicating liquor, ..... 449-453

**FORMEDON.**

- writs of, abolished, saving certain rights, ..... 696

**FORMER ACQUITTAL.**

- upon facts and merits to bar subsequent prosecution, ..... 730
- but not when acquittal was for variance, ..... 730
- or for exception to form, &c., of indictment, ..... 730
- out of the state in case of a duel, effect of, ..... 732

**FORNICATION.**

- how punished, ..... 813

**FORTUNE TELLING.**

- fraudulently obtaining property by, how punished, ..... 928
- jurisdiction given to justices of the peace and police courts, ..... 570, 629

**FOURTH OF JULY.**

- legislature not to sit for ordinary business, and public offices to be closed, ..... 6
- courts not to be opened, except, &c., ..... 617, 621
- bills of exchange maturing on, when payable, ..... 28

**FRANCHISE OF CORPORATION.**

- unwarranted exercise of, by corporations and individuals, how restrained, ..... 74
- attachment of, how made, &c., ..... 5
- seizure and sale of, on execution, ..... 257, 26

**FRAUD.**

- gross, at common law, how punished, ..... 92
- by cheating at cards, how punished, ..... 32

**FRAUD — continued.**

- suits in cases of, may be brought in supreme judicial court in equity,..... 559
- of officers, in sale of goods on execution, or in return thereof, remedy for,..... 689
- when real estate held by, is attached, officer to make special return, &c.,..... 626
- persons suspected of, respecting estate of insolvent debtors, wards, and deceased persons, how examined,..... 489, 546, 547, 597

**FRAUDS AND PERJURIES.**

- provisions for prevention of,..... 527, 528
- certain contracts to be in writing,..... 527
- consideration need not be in writing,..... 527
- new promise by debtor discharged in insolvency to be in writing,..... 527
- contracts for sale or transfer of certain stocks void, unless vendor is owner, &c., ..... 528

**FRAUDULENT ATTACHMENTS.**

- how contested and dissolved,..... 681

**FRAUDULENT ASSIGNMENTS.**

- how contested in trustee process,..... 722

**FRAUDULENT CONVEYANCES.**

- of personal property render holder liable to trustee process,..... 723
- by debtor, when sufficient cause for proceeding against him in insolvency,..... 596, 599
- and preferences by insolvent debtors, effect of, respecting discharges, and how may be avoided by assignees,..... 598, 594
- of real estate, how attached and taken on execution,..... 516, 517, 623
- how may be treated by executor, &c., of grantors,..... 511

**FRAUDULENT DEBTORS.**

- how punished,..... 688, 689

**FRAUDULENT CONCEALMENT.**

- of cause of action by person liable thereto, saves operation of statute of limitations,..... 778
- of mortgaged personal property, how punished,..... 803
- of wills, proceedings respecting,..... 477, 798

**FRAUDULENT ISSUES, &c.**

- of stock, how punished,..... 801, 802

**FREEHOLD.**

- when leases are considered as,..... 471
- estates of, how recovered by writ of entry,..... 692
- persons in possession of, &c., may have process to compel persons having adverse claims to bring action to try title, or be estopped, &c.,..... 696

**FREIGHTERS.**

- of merchandise, remedy of, against ship owners,..... 289

**FRIENDS. (See Quakers.)**

**FRUIT.**

- to be sold by dry measure, under penalty,..... 284
- punishment for unlawfully taking, &c.,..... 306
- jurisdiction of offence given to justices of the peace,..... 609

**FUEL.**

- what exempt from levy on execution and attachment,..... 624, 688

**FUGITIVES FROM JUSTICE.**

- provisions respecting,..... 7, 8
- governor may, on demand, deliver to executive of any other state, &c., persons charged therein with treason, felony, or other crime,..... 858
- may appoint agents to demand them from the executive of other states,..... 853
- if demand is complied with, expense to be audited and paid,..... 854
- demand or application to be accompanied with what,..... 853, 854
- proceedings on such demands from other states, .... 854
- persons arrested not to be delivered to agent of other state without opportunity to apply for habeas corpus,..... 854
- penalty for surrendering, without such opportunity,..... 854
- notice of such application must be given to prosecuting officer,..... 854
- persons liable to be demanded by other states may be arrested,..... 854
- and required to recognise, or be committed,..... 854
- if charged with capital crime, to be detained in jail,..... 854, 855
- how proceeded with, or discharged,..... 855
- complainant liable for expense of all actual costs and charges, and support of prisoner,..... 855
- if charge for support is not paid, jailer may discharge,..... 855

**FUGITIVES FROM SERVICE.**

- how to be surrendered,..... 7, 8
- persons arrested as, may have habeas corpus,..... 733
- proceedings in such cases,..... 736, 737
- falsely accusing person of crime, that he may be held to answer as, how punished,..... 738
- if done by public officer, to disqualify for office,..... 738, 734

**FUNERALS.**

- wilful disturbance of, how punished,..... 820

**FURNACES.**

- for melting iron, or making glass, erection and use of, may be licensed and regulated in certain places by selectmen, &c.,..... 458
- owner aggrieved may have jury, as in case of highways,..... 459
- court may restrain use of, while appeal is pending,..... 459
- verdict of jury, and costs in such cases,..... 459
- erected and used contrary to law to be deemed common nuisances,..... 459
- and may be removed by selectmen, &c.,..... 459

**FURNITURE.**

- what exempt from taxation,..... 74
- what exempt from attachment and execution, .. 624, 688

**G.**

**GAMING.**

- persons losing money by, may recover it back,..... 435
- if such person does not prosecute within three months, &c., any other person may recover treble amount lost,..... 435

**GAMING — continued.**

- owner, &c., of gaming house liable for money lost,..... 435
- penalty for winning by, five dollars or more at one time,..... 435, 436

**GAMING—continued.**

notes, conveyances, &c., for money lost by, void, except as to bona fide holders,.....	436
when such conveyances adjudged void, to whose benefit lands to inure,.....	436
penalty on innholders, &c., for keeping, &c., implements for,.....	436
for permitting use of implements for, on the Lord's day,.....	436
penalty for gaming in such places, and in places licensed for bowling alleys,.....	436
penalty for keeping house for,.....	436
common gaming houses may be entered, and parties arrested, &c.,.....	436, 437
penalty for being found playing therein,.....	437
for gaming at musters, cattle shows, &c.,.....	437
booths used for, within one mile of muster fields, &c., how removed,.....	454
houses resorted to for, to be deemed common nuisances,.....	454
penalty for keeping such,.....	454
use of, by tenant, for such purpose, to avoid lease,.....	454
penalty on landlord for letting for such purpose,.....	454
fraudulently obtaining property by, how punished,.....	802
by way of lottery, how punished,.....	828
Apparatus and implements, search warrant may issue for,.....	830
<b>GANWAY ROCK.</b>	
buoy on, ceded to United States,.....	44
<b>GARDENS.</b>	
wilful and malicious injury to, how punished,.....	806
how, when committed on Lord's day,.....	806
<b>GASLIGHT COMPANY.</b>	
ten or more persons may become a corporation for manufacturing, &c., gas,.....	848
not to be organized in town where gas company exists, except by inhabitants of place,.....	848
nor unless existing corporation has realised an annual dividend of seven per cent five years,.....	848
such corporations may dig up streets, &c., with consent of selectmen, &c.,.....	848
to put such streets in repair, and upon failure, to be deemed guilty of a nuisance,.....	848
acts of, to be under regulation of selectmen, &c.,.....	848
other companies may hold stock in,.....	848
these provisions may be amended or appealed by legislature,.....	848
<b>GATES.</b>	
at railroad crossings, when to be erected,.....	861
may be altered by county commissioners,.....	862
penalty on agents stationed to open and close, for neglect of duty,.....	861
when location of, may be altered,.....	862
on town or private ways, how removed,.....	251
punishment for throwing down, opening, &c.,.....	804, 806
of mills, wilful injury to, how punished,.....	804
<b>GAY HEAD.</b>	
land for lighthouse at, ceded to United States,.....	44
Indiana, appropriations, &c., for schools for,.....	218
<b>GENERAL COURT.</b>	
legislative department to be so styled,.....	17
may constitute courts,.....	18
may make laws not repugnant to the constitution,.....	18
may provide for the appointment of officers, and prescribe their duties,.....	18
may impose taxes,.....	18

**GENERAL COURT—continued.**

not to adjourn exceeding two days,.....	20, 21
may be adjourned, or prorogued, by governor and council,.....	23
when and how convened and dissolved,.....	22, 23
petitions to, affecting rights of individuals, private corporations, towns, &c., how notice to be given, &c.,.....	47, 48
compensation of members and officers,.....	45
members of committees of, may administer oaths to witnesses,.....	49
journals and files of, to be in possession of clerks,....	47
to hold no sessions for transaction of ordinary business on certain holidays,.....	45
members of, not eligible to office created during their term of service, except by vote of the people,.....	49
apportionment of senators and representatives,.....	62-64
to fill vacancies by joint ballot, if majority of presidential electors not chosen,.....	60
by committee, to examine, &c., condition of arsenal, &c., in Cambridge annually,.....	104
sergeant-at-arms of, how and when chosen,.....	123
powers and duties of,.....	123, 134
doorkeepers of, how, when, and by whom appointed,.....	123
committee of accounts of, to examine books, &c., of auditor,.....	126
no committee of, to incur liability, after close of session, without an appropriation,.....	141
compensation of committee of, to be fixed by governor and council,.....	141
<b>GENERAL FIELDS.</b>	
are distinct lots enclosed in one,.....	351
meetings of proprietors of, how called and warned,.....	351
how votes are to be given,.....	351
absent proprietors may vote by proxy, &c.,.....	351
clerk, assessors, collector, &c., may be chosen,.....	351
tenure of office,.....	351
clerk to be sworn,.....	351
to issue warrant for collecting assessment,.....	352
assessors of, to be sworn, and to assess money raised,.....	351, 352
field drivers of, to have powers of town field drivers,.....	351
land enclosed for benefit of proprietors of, not to be reckoned in voting,.....	351
how fences of, to be apportioned, &c.,.....	352
assigned and repaired,.....	352
assignment of fences to be recorded, and where,.....	352
expense of apportioning, and making fence, how borne,.....	352
proceedings when part of fence assigned is deficient, and proprietor neglects to repair, &c.,.....	352
proprietor, &c., neglecting to repair, liable to double costs, &c.,.....	352
fence suddenly blown down, &c., to be repaired within twenty-four hours, &c., under penalty of double costs,.....	352, 353
Proprietors, each of, may manage and cultivate his land as he thinks best,.....	353
trespassers, if they violate rules, &c.,.....	353, 354
entitled to remedy for trespasses by straggling cattle,.....	353
not liable to maintain fence, &c., if he do not cultivate,.....	353
may enclose his own land, &c.,.....	353
to run lines if requested, and keep up boundaries,.....	353



**GENERAL FIELDS—continued.**

penalty if he fails so to do after seven days' notice,.....	383
may choose clerk, assessors, and field drivers,.....	381
may adopt rules as to pasturing, &c.,.....	381
may raise money by assessment, for common charges,.....	382
when overrated, may apply to county commissioners,.....	382
when may be ordered by superior court to enclose their lands,.....	383
such order not to be made, unless upon application of greater part in interest,.....	383
rights and proceedings of proprietors after such order,.....	383
how may discontinue their fields,.....	384
writs, &c., against, how served, and how long before return day,.....	383
Division of, how may be made,.....	383

**GENERAL ISSUE.**

abolished, except in real and mixed actions and actions before justice of the peace, &c., and answer substituted,.....	656
in real actions, defendant may give in evidence what might formerly have been pleaded in bar,.....	656
in writs of entry, actual entry need not be proved,.....	662
non-tenure, disclaimer, several tenancy, and sole tenancy, may be given in evidence under,.....	668
Before justices of the peace, may be pleaded orally,.....	606
upon appeal, case may be tried on same plea, unless court orders other plea to be made,.....	607

**GENERAL STATUTES.**

these statutes so designated,.....	880
when to go into operation,.....	880
repeal of acts, &c., by, not to revive former laws,....	880
not to affect acts done,.....	880
nor penalties or forfeitures incurred, except when mitigated therein,.....	880
nor suits commenced, except as to form of proceedings,.....	880, 881
time of limitations, that has begun to run, to continue,.....	881
tenure of existing offices preserved, except, &c.,....	881
to be construed as a continuation of existing laws,.....	881

**GEORGE'S ISLAND.**

ceded to United States,.....	44
------------------------------	----

**GIRDLING TREES.**

wantonly or wilfully, how punished,.....	805
damages for, how recovered,.....	709

**GLASS.**

punishment for wantonly breaking, in buildings,....	805
erection of furnaces for making, regulated,.....	458

**GLOSSARY.**

of foreign and technical words used in these statutes,.....	909
---	-----

**GLOUCESTER.**

land in, ceded to United States,.....	44
Ten Pound Island, in harbor of, ceded to United States,.....	44
Straitmouth Island, in harbor of, ceded to United States,.....	45
land in, for custom-house, ceded to United States, ..	45

**GOATS.**

found going at large contrary to law, &c., to be impounded,.....	186-187
--	---------

**GOLD.**

when tendered by banks, how to be weighed,.....	310
(See Coin.)	

**GOVERNMENT.**

right of the people to institute and change,.....	15
---	----

**GOVERNOR.**

to approve bills and resolves, or return to legislature with objections,.....	17
and five at least of council to examine, &c., returns of votes, and issue summonses,.....	20, 60
style and title of,.....	22
to be chosen annually,.....	22, 34, 36, 62
qualifications of,.....	22, 33
oath of,.....	29, 33
return of votes for,.....	22, 59, 60
may convene council and legislature,.....	23
to be commander-in-chief,.....	23, 33
pardoning power vested in, with advice of council,.....	24
to draw warrants for payment of money from treasury,.....	24
not to draw warrant unless account certified by auditor,.....	139
judicial officers and coroners to be appointed by,....	24
officers of the militia to be commissioned by,.....	24
salary of,.....	25, 123
to be paid without specific appropriation therefor,.....	139
to have no fees or perquisites of office,.....	128
to be president of council,.....	25
exempt from serving as juror,.....	679
lieutenant-governor, when to act as,.....	25, 26
council, when to exercise powers of,.....	26
to hold no other office, except, &c.,.....	30, 33
address and messages of, to be published with acts and resolves,.....	50
address of, when may be put in type,.....	53
when to issue precept for choice of representative in congress,.....	68
to transmit certificates to electors of president and vice president,.....	69
to convene general court by proclamation, if majority of presidential electors not chosen,.....	69
to order new elections, in case of failure to elect district-attorneys, clerks of courts, &c.,.....	71
may administer oaths of office to public officers,.....	131, 132
to appoint commissioners to qualify public officers,.....	131
may appoint commissioners in other states, &c., to take depositions, acknowledgment of deeds, &c.,.....	132
a messenger,.....	134
notes for money borrowed in anticipation of revenue, to be approved by,.....	139, 140
may remove sheriffs from office, upon neglect to give bond, or to pay amount of judgment against him,.....	150, 151
may offer and pay reward, not exceeding one thousand dollars, for arrest of certain offenders,.....	381
power and authority of, as regards fugitives from justice,.....	363, 364
as to granting pardons and commuting punishments,.....	355, 356, 375

**GOVERNOR AND COUNCIL.**

may punish for contempt,.....	22
when may require opinions of justices of supreme judicial court,.....	27

**GOVERNOR AND COUNCIL—continued.**

conveyances of public lands and flats subject to approval of,.....	55, 189
authority of, as to state prison,.....	370

**GOVERNOR'S ISLAND.**

ceded to United States,.....	44
------------------------------	----

**GRACE.**

on bills of exchange, notes, &c.,.....	294
not allowed on notes on demand,.....	294

**GRAIN AND MEAL.**

to be sold by the bushel,.....	265
weight of the bushel of the different kinds of,.....	265
measurers of, to be appointed,.....	265
may be authorized to appoint deputies,.....	265
duties and fees of, and their deputies,.....	265
penalty on, for using false weights, &c.,.....	265
penalty for short weight, if measurer is not employed,.....	265
special provisions concerning measures for,.....	296
toll for grinding not to exceed one sixteenth part thereof,.....	761

**GRANDCHILDREN.**

by consanguinity, how to maintain their poor grandparents,.....	892
or affinity, not punishable as accessory after the fact for felony committed by grandparents,.....	826

**GRAND JURORS. (See Jurors.)**

qualifications, approval, drawing, and fees of,....	786, 887
how often liable to serve, and penalty for neglecting to attend,.....	680, 688
venires for twenty-three shall be issued by clerk of superior court, except in Suffolk, before commencement of first term in every year,.....	837
in Suffolk, by clerk of superior court for criminal business, before commencement of each January or July term,.....	837
shall be issued seven days at least, and not more than thirty, before term commences,.....	837
in Suffolk, shall serve for six months, and in other counties through the year,.....	837
where there are criminal terms, shall attend only at such terms,.....	837
shall be drawn, summoned, and returned like jurors for trials,.....	837
when drawn at same time with jurors for trials, those who are first drawn shall be grand jurors,.....	837
when sufficient number do not attend, court may issue venires for others forthwith,.....	837
form of oath, and mode of administering,.....	837
those scrupulous of taking oath may make affirmation,.....	837
after being empanelled, and receiving charge of the court, shall elect their foreman by ballot,.....	837
court to charge specially concerning certain matters,.....	838
choice of foreman to be notified by them to court, and record thereof to be made by clerk,.....	837
foreman of, elected at first term, to continue such during time of service,.....	837, 838
new foreman shall be elected if the first dies or is absent,.....	838
foreman, or prosecuting officer, may swear witnesses who come before the jury,.....	838
shall return a list of all witnesses sworn before the jury during the term,.....	838

**GRAND JURORS—continued.**

may appoint one of their number as clerk, to preserve minutes of their proceedings, &c.,.....	58
such minutes to be delivered to prosecuting officer, if jury so direct,.....	58
if dismissed while court remains in session, may be summoned, if necessary, to attend again at same term,.....	58
shall cause the law for observance of Lord's day to be carried into effect,.....	58
shall not disclose the finding of an indictment for felony, if party be not in custody nor under recognizance,.....	58
not allowed to state, nor to testify in court, as to any votes or opinions on questions before them,.....	58
to be reminded, by charge of court, of their obligation to secrecy,.....	58
duty of, when they find no bill because of prisoner's insanity,.....	58
in such case prisoner, when to be confined in hospital, or to be discharged,.....	58
none who find indictment to be on jury for trial thereof,.....	58

**GRANT.**

of any interest in land to be in writing, or by operation of law,.....	95
void, when made on gaming consideration,.....	67

**GRANTOR and GRANTEE.**

how construed,.....	51
grantor to make known to grantee if encumbrances exist on estate conveyed,.....	67
to be liable in damages for neglect, &c.,.....	67
and punished by fine or imprisonment,.....	62

**GRASS.**

punishment for wilfully cutting, without authority,.....	95
for wilfully entering lands, &c., with intent to cut, &c.,.....	95

**GRATUITIES.**

to jurors, when cause for new trial,.....	86
---	----

**GRAVEL.**

penalty for wilfully digging up, without license,.....	97
--	----

**GRAVESTONES.**

punishment for wilfully defacing, destroying, &c.,.....	197, 221, 22
---	--------------

**GREAT BREWSTER ISLAND.**

land on, ceded to United States,.....	6
---------------------------------------	---

**GREAT WOODS HOLE.**

land for sea-wall at, ceded to United States,.....	6
--	---

**GROSS FRAUDS OR CHEATS.**

at common law, how punished,.....	90
-----------------------------------	----

**GUARDIANS.**

to be appointed by probate court,.....	545, 51
first appointed, to have whole charge of estate of ward,.....	57
registers of probate and insolvency not to be, in their county,.....	62
to give bond, and condition thereof,.....	57
bond to be approved by judge of the probate court,.....	57
when exempted from giving bond for proceeds of sale of real estate,.....	57
when new bond may be required of,.....	57
sureties on bond may be discharged, &c.,.....	57
court,.....	57
suits may be brought on bonds,.....	57
against sureties limited,.....	57
general powers and duties of,.....	57
may make partition of real estate of ward, set of dower, &c.,.....	57

**GUARDIANS—continued.**

may appoint appraiser of real estate on execution in which ward is interested,.....	545
duties of, when ward's property is to be taken for his support, &c., when father is living,.....	545, 546
may sell, transfer, &c., stocks of wards by lease of court,.....	546
may transfer property of ward when a guardian is appointed in another state,.....	546
removal, resignation, and death of,.....	546
marriage of female guardian extinguishes her authority,.....	546
of female ward, effect of,.....	546
wards, how discharged from guardianship,.....	546
proceedings for recovering concealed effects, &c.,.....	546, 547
compensation of,.....	547
property in hands of, not to be taxed for parochial purposes,.....	202
may release damages to lands, &c., taken for use of railroad,.....	352
of married man to join with wife in release of dower and homestead,.....	525
of mill proprietor may act for ward,.....	760
may receive payment of mortgage due their wards, and execute release,.....	715
tender on such mortgage may be made to,.....	715
when tenants in common with wards may have partition,.....	705
may prosecute and defend suits commenced by or against ward before insanity,.....	650
when liable to pay fine and costs of their wards,....	579
accounts of joint, may be allowed on oath of one,.....	504
Of minors, by whom to be nominated, &c.,.....	543
powers and duties of,.....	543
may be appointed by will of father,.....	543
such guardian to give bond, unless otherwise ordered in will,.....	543
may join with widow in sale of estate of homestead,.....	526
Of insane persons and spendthrifts, how appointed, &c.,.....	543, 544
such persons to be notified, and may defend,....	544
expenses of defence, how allowed and paid,.....	544
powers and duties of,.....	544
contracts by spendthrifts, in certain cases, void,.....	544
Of persons out of the state, how appointed, &c.,.....	544
powers and duties, and bond, of,.....	544
Of married women, when may be appointed,.....	539, 540
not to have custody of ward, except, &c.,.....	539

**GUARDIANS—continued.**

not to apply property to support of, without leave of court,.....	539, 540
of insane married woman to join with husband in conveyance of estate of homestead,.....	525
Sales of land by, for payment of debts,.....	512
for maintenance and investment,.....	513
by foreign guardians,.....	513
provisions common to all sales by executors, administrators, and guardians,.....	513-515
For a suit, may be appointed by courts for minors and insane persons,.....	533, 543, 650
in proceedings for partition of land,.....	700, 704
for persons not in being,.....	705
for absent heirs,.....	703
for proceedings for adoption of children,.....	547
Of Indians,.....	133
<b>GUIDE POSTS AND BOARDS.</b>	
to be erected and maintained by towns,.....	249
places of, to be reported annually by selectmen,.....	249
to be determined by towns, and recorded,.....	249
form of, and inscription on,.....	249
penalty for injuring or defacing,.....	249
for wilful, &c., removal of,.....	868
on selectmen for not reporting places for,.....	249
on towns for not determining places for,.....	249
in suits, &c., for not erecting, when towns stepped from denying necessity, &c., of,.....	249
<b>GUNPOWDER, GUN-COTTON, AND OTHER EXPLOSIVE SUBSTANCES.</b>	
regulations concerning keeping of, &c., may be made by towns, &c.,.....	430
search warrants may be issued to ascertain concerning such articles kept contrary to law,.....	471
penalty for keeping same contrary to law,.....	471
Camphene, towns, &c., may regulate storage and sale of,.....	461
penalties may be imposed for breach of such regulations,.....	461
Gunpowder, to be put into strong and tight casks or canisters,.....	265
casks, size of, and how to be marked,.....	265
canisters, material and size of, and how to be marked,.....	265
penalty for falsely marking casks, or changing contents,.....	265
wilful, &c., injury by, to houses, &c., how punished,.....	804
<b>GURNET HEAD.</b>	
In Plymouth county, lighthouse on, ceded to United States,.....	44

**H.****HABEAS CORPUS.**

writ not to be suspended, unless, &c.,.....	5, 31
to be enjoyed in the most free and ample manner,.....	31
every person imprisoned or restrained entitled to, for relief, as of right and of course, except, &c.,.....	734
who not entitled to, as of right,.....	734
application for, to be made in writing, by complaint,.....	84

**HABEAS CORPUS—continued.**

and signed by the party, or by some one in his behalf,.....	734
what shall be set forth in such complaint,.....	734
facts stated to be sworn to by party, or by a credible witness,.....	734
to be issued on such complaint, and made returnable forthwith at place designated in the writ,.....	734, 735

HABEAS CORPUS—*continued.*

by whom the writ may be issued,.....	784
shall be made returnable to supreme or superior court, or a judge of said courts,.....	784, 785
when issued by court in session, shall be signed by clerk, otherwise by magistrate issuing it,.....	785
may be served by any sheriff, or his deputy, of any county,.....	785
if court to which it is returnable be adjourned, shall be returned before either of the judges thereof,.....	786
if returned before a single judge, when court is in session, he may adjourn the case into the court,.....	786
form of, when complaint is against a sheriff, or other like officer, to be as heretofore established,.....	784
in other cases,.....	785
how may designate the prisoner and the person having custody of him,.....	785
when to have the sum payable for expense of bringing party from place of imprisonment certified thereon by court, &c., that grants it,.....	785
officer to whom, in such case, it is directed, not bound to serve it, unless such sum be paid or tendered,.....	785
within what time to be returned,.....	785
what shall be stated in the return of, &c., by person making it,.....	785
return, &c., to be signed by person making it, and sworn to, unless he is a sworn public officer acting officially,.....	785
person making return, &c., to bring in the prisoner, if in his custody or power, unless prevented by his sickness, &c.,.....	785
if prisoner be sick, &c., that fact to be stated in the return,.....	785, 786
court or judge, on proof of that fact, may go to the place of confinement,.....	786
or may make such order as the case requires,.....	786
when returned, court or judge shall, without delay, examine the cause of restraint,.....	786
examination may be adjourned from time to time,.....	786
notice of, when to be given, before discharge, to persons interested in process under which prisoner is detained,.....	787
when to be given to the attorney-general, &c.,.....	787
prisoner may deny any facts stated in the return, and allege any material facts,.....	786
evidence to be heard, and prisoner disposed of, according to law and justice,.....	786
shall be discharged, if restraint, &c., be illegal,.....	787
shall not be discharged by superior court when committed on process from supreme court,.....	789
shall be bailed, when legally detained for bailable offence, or remanded, if sufficient bail be not offered,.....	787
when remanded for such reason, court shall order the sum in which he shall be held to bail,.....	787
confined on sentence, may, after bringing writ of error, be enlarged on giving bail, if entitled thereto,.....	746
if legally imprisoned, &c., and not bailable, to whom shall be remanded,.....	787

HABEAS CORPUS—*continued.*

how kept, &c., pending the examination of his case,.....	787
entitled to recover a forfeiture, if copy of any process under which he is detained be withheld six hours after demand thereof and tender of fees therefor,.....	788
if discharged, not to be restrained again for same cause, except, &c.,.....	787
when may be again arrested for same cause,.....	787
persons refusing or neglecting to obey and execute, to be proceeded against as for a contempt,.....	788
sheriff, against whom attachment issues for contempt, in such case, may be committed to jail in another county,.....	788
who may serve process of attachment, in such case, on sheriff or his deputy,.....	788
on refusal, &c., to serve, court, &c., may issue new precept to bring up prisoner,.....	788
forfeiture to prisoner for refusing, &c., to receive and serve writ,.....	788
for removing or concealing him, to evade writ,.....	788
recovery of such penalty not to bar action for false imprisonment or false return, &c.,.....	788, 789
judge of supreme and superior court not hereby restricted from issuing habeas corpus and admitting to bail,.....	787, 788
magistrates not hereby prevented from bringing in prisoners for trial, or witnesses in any suit,.....	788
In case of persons claimed to be held to service and labor,.....	788
any party to proceeding may demand trial by jury,.....	788
person so claimed may be held to bail in not over two thousand dollars,.....	788
form of issue and plea,.....	788
jury may return a general verdict, and exercise the same discretion as in criminal cases,.....	788
verdict of "not guilty" to be final and conclusive,.....	788
jurors, how summoned, and penalty for non-attendance,.....	788
when one jury disagrees, another may be summoned,.....	788
if claimant appears, must state his claim in writing,.....	788
neither claimant nor alleged fugitive to be witness,.....	788, 789
admissions or confessions of alleged fugitive not to be evidence,.....	788, 789
burden of proof on claimant,.....	788, 789
amount of evidence required,.....	788, 789
ex parte depositions or affidavits not admissible,.....	789
no presumption in favor of claimant from proof that the alleged fugitive or his ancestors had been held as slaves, &c.,.....	789
In case of persons arrested as fugitives from justice,.....	784
opportunity to apply for, to be given to person arrested,.....	784
notice of application to be given to attorney-general or prosecuting officer,.....	784
penalty on officer for extradition of such person without permitting application for habeas corpus,.....	784

**HALF BLOOD.**

to inherit equally with those of whole blood,..... 474

**HALF-TIDE ROCKS.**

and buoy on, ceded to United States,..... 44

**HALF-WAY ROCK.**

ceded to United States,..... 44

**HARBORING.**

felon, how punished, ..... 826

or protecting an enemy, by soldier in actual service,..... 121

**HARVARD COLLEGE.**

powers, rights, and privileges of, confirmed,..... 28

gifts, grants, &c., to be held according to intent of donors,..... 28

overscers of,..... 28

alteration of government of, may be made by general court, ..... 28

professors, &c., to impress upon youth principles of piety, temperance, &c.,..... 216

**HAWKERS AND PEDLERS.**

articles which may be sold by, without license,..... 281

sale of such articles by minors may be regulated by cities and towns,..... 281

penalty for violation of such regulations,..... 281, 282

sales of certain articles by, prohibited, ..... 282

licenses of, how and by whom granted,..... 282

form and effect of,..... 282

fees for, to secretary of state, and town, or city treasurer,..... 282

when to bear date, and term of,..... 282

to be recorded,..... 283

state and county, upon what terms granted,..... 282, 283

sums paid for, to belong to state, county, &c., receiving the same,..... 283

not to protect party selling articles illegally,..... 283

void, if parties violate the law,..... 283

number of, and name and residence of party, to be placed on parcels, &c.,..... 283

synopsis of law to be printed on,..... 283

to be exhibited to certain officers, on demand, under penalty,..... 283

penalty for counterfeiting or forging,..... 283

for selling after expiration or forfeiture of,.... 283

when licensed as auctioneers, not to sell except in place for which he is licensed, ..... 283

penalty on, for acting without license,..... 283

**HAY.**

weighers of, to be appointed by selectmen, &c.,..... 161, 266

duties and fees of,..... 266

may be removed by selectmen, &c.,..... 266

pressed, how to be branded,..... 266

to be forfeited, if sold without being branded, .. 266

bale or bundle, inspectors of, may be appointed,.... 266

duties and fees of,..... 266

to furnish with weights, &c.,..... 266

how numbered and marked,..... 266

penalty for selling without inspection,..... 266

inspection may be waived by agreement, ..... 267

what exempt from attachment and levy on execution, ..... 624, 688

**HAY SCALES.**

superintendents of, to be appointed,..... 161, 266

duties and fees of, &c.,..... 266

penalty for setting up, without authority,..... 266

to be sealed, &c., annually,..... 266

**HEALTH. (See Board of Health.)**

measures for preservation of,..... 188-194

punishment for adulterating food, medicines, &c., and other offences against public health,..... 794, 822, 823

**HEIRS.**

who shall be, of intestate property,..... 474, 485

entitled to lands conveyed by ancestor on gaming consideration, when conveyance is adjudged void,..... 436

may administer on property deposited by public administrator in state treasury,..... 487

when and how liable for debts of ancestor,..... 507

actions against, for such debts, not barred by provisions for actions against executors, &c.,..... 492

not liable to pay more than amount received from deceased's estate,..... 507, 508

liable to contribute among themselves in certain cases,..... 479, 508

having claim for further damages against executor, &c., after judgment on bond, may have scire facias and new execution thereon,..... 507

powers and duties of heirs of creditor when judgment debtor redeems land taken, &c., on execution,..... 523

how may be made parties to real and mixed actions, and petitions for partition commenced by their ancestors,..... 649, 650

may commence and prosecute suits for redemption of mortgages,..... 715

may bring actions of waste for waste done in time of ancestor,..... 708

may have same right to apply to county commissioners in certain cases as their ancestors had,..... 650

**HEREDITARY OFFICES.**

absurd and unnatural, ..... 14, 15

**HERRING.**

regulations concerning the inspection and sale of,..... 268, 264

**HERRING POND INDIANS.**

appropriation, &c., for schools for,..... 213

**HIGHWAYS.**

word, how construed,..... 51

money may be granted by towns for laying out, &c.,..... 158

**LAYING OUT AND DISCONTINUANCE.**

petitions for laying out, &c., to be made to county commissioners,..... 232

not to be proceeded on, until parties recognize for costs, in case, &c.,..... 232

notice of, how given,..... 232

commissioners to view route of,..... 233

to hear parties, and adjudicate upon necessity of laying out,..... 233

to proceed to lay out, &c., as soon as may be after adjudication,..... 233

to give notice before laying out,..... 233

may make changes of, between termini,..... 233

may lay out, &c., highways, within six months, if no one objects, &c.,..... 233

may discontinue highway, &c., at time of view,..... 233

return of proceedings at next meeting to be held to be discontinuance,..... 233

may order specific repairs upon existing ways, upon petition for laying out new highways, in certain cases,..... 233

to give notice in such case, and apportion expense as in laying out, &c.,..... 233

may temporarily close highways during repairs thereon,..... 233

may locate anew existing highways, on application by town, &c.,..... 233

HIGHWAYS—*continued.*

may assess expense of such locating anew, &c., on town, county, or petitioners, .....	233
to prescribe manner and time for making highway when laid out or altered, &c., .....	233
to transmit to clerks of towns in which highway lies a description of location, &c., .....	234
such description to be recorded by town clerk within ten days, .....	234
to allow reasonable time to owner of land for removing trees, &c., .....	234
if such trees are not removed within time allowed, right to be deemed relinquished, .....	234
to estimate damages caused by laying out, &c., .....	234
not to order such damages to be paid till land is taken for construction of highway, .....	234
to allow indemnity to persons claiming damages in certain cases, though no entry is made, .....	234
to estimate damages caused by specific repairs, &c., .....	234
to order damages to be paid at first meeting after repairs are made, .....	234
if repairs are not made, &c., may allow actual damage, .....	234
manner of estimating damages in case of laying out, altering, &c., .....	234
if claimants have different interests, entire damages to be assessed and paid to trustee named by parties, .....	234
damages, how disposed of in such case, .....	234
trustee to receive damages, &c., to be appointed by probate court, in certain cases, .....	234, 235
party aggrieved by laying out, &c., or by estimate of damages, may have jury, .....	235
or a committee appointed under direction of commissioners, .....	235
powers of jury in such cases, .....	235
applications for jury to revise location, &c., when to be received and acted on by commissioners, .....	235
to revise assessment of damages to be made within one year, &c., .....	235
may be made jointly by several claimants, &c., .....	235
of different parties pending at same time, to be determined by same jury, .....	235
if one of several claimants having different interests applies for jury, others may become parties, &c., .....	235
no jury to be ordered, &c., until petitioners recognize for costs, .....	235
petition for jury not to abate by death of parties, .....	235
executors, &c., may prosecute in such case, .....	235
if executors neglect to prosecute, surviving petitioners may proceed, .....	235
jury, warrant for, to be directed to sheriff, &c., .....	235
how and whence summoned, .....	235
penalty on person summoned to serve on, for neglect to attend, .....	235
if not full, talesmen may be returned, .....	235
to be sworn, .....	235
commissioners may appoint person to preside at trial, .....	235

HIGHWAYS—*continued.*

if no person appointed, sheriff to preside, &c., .....	235
duties of presiding officer, .....	235
commissioners to take notice of petition for, in behalf of their county, &c., .....	235
and may appoint agent to act before, for county, .....	235
notice of time and place of meeting of, to be given by officer who summons, .....	235
fees of officer for summoning, .....	235
such officer to certify fees of, together with his own, .....	235
to view premises, hear evidence, &c., and sign verdict, .....	235, 237
to determine title to lands only, as respects damages of complainant, .....	237
may extend time for removing trees on land taken for laying out, &c., .....	237
verdict of, to be enclosed in sealed wrapper, with indorsement, &c., .....	237
verdict to be given within three months after order for, .....	237
to be returned to superior court, &c., .....	237
may be set aside by court for good cause, .....	237
if accepted and recorded, to be conclusive, .....	237
if jury do not agree, complainant entitled to new jury until verdict, &c., .....	237
complainant may waive his right to jury, and accept damages awarded by commissioners, .....	237
if questions are determined by a committee, report to be made within three months after appointment, .....	237
proceedings in such case same as upon return of verdict by jury, .....	237
if jury or committee do not alter decision of commissioners, costs to be paid by applicants, .....	237
questions of costs to be determined by court to which verdict, &c., is returned, .....	237
notice to parties interested, how given in such case, .....	239
party having notice, and neglecting to appear, to be barred from application for damages, .....	239
jury to apportion damages in their verdict, .....	239
verdict in such case to be conclusive on persons who have become parties or had notice, .....	239
costs in such cases, how taxed, .....	239
not to be opened, or worked, or shut up until meeting of commissioners after verdict, &c., is certified to them, .....	239
commissioners may then allow further time for making, &c., .....	239, 240
when finally laid out, &c., or specific repairs ordered, expenses of proceedings, &c., to be paid by county, .....	239
if not laid out, &c., expenses to be paid by petitioners recognizing therefor, .....	239
expenses, how paid and collected if petitioners refuse or neglect to pay, .....	239
if not made by towns liable, commissioners to cause them to be made, .....	239
expense of making such highways to be paid from county treasury, and delinquent towns notified, .....	239
how collected of delinquent towns, .....	239
incurred by town, may be paid by county by order of commissioners, .....	239
commissioners to view such highway, and certify completion to county treasurer, .....	239

**HIGHWAYS—continued.**

Town ways, money may be granted for laying out, &c.,	158
and private ways may be laid out by selectmen,	239
may be discontinued by town at a meeting called for the purpose,	239
not to be laid out, &c., until notice to owners of land, &c.,	239
notice, how given,	239
damages for laying out, how determined and paid,	239, 240
not to be paid until land is entered upon for construction of way,	240
if land is not taken, &c., indemnity may be allowed, &c.,	240
if there are different interests in land taken for, damages how assessed,	234, 240
location of, to be accepted at legal town meeting before laying out,	240
and filed in town clerk's office seven days before such meeting,	240
may be laid out by county commissioners, in certain cases,	240
may be made and completed by commissioners, if town neglects,	240
expense of making, may be paid from county treasury in such case, and collected of town with interest, &c.,	240, 241
when laid out, &c., by commissioners, town not to discontinue within two years,	241
may be discontinued by county commissioners if town refuses,	241
when so discontinued, town not to lay out again within two years,	241
when application to lay out, is made to commissioners, recognizance for costs to be required,	241
commissioners to give notice before viewing, &c.,	241
parties aggrieved by laying out, &c., may have jury to ascertain damages, &c.,	241
order for jury, in such case, to be made by commissioners,	241
powers of jury,	241
costs in such cases,	241
owner of land taken for, to have time for removal of trees, &c.,	241
neglecting to remove within time allowed, to be deemed to relinquish right,	241, 242
time for removing trees, &c., may be extended by jury,	242
commissioners or selectmen to transmit to town clerk location, &c., for record,	241
such location to be recorded by town clerk within ten days,	241
legality of, when laid out and accepted, not to be contested by town,	242
liability of railroads for damages at crossings,	359
application for damages to private ways, occasioned by railroad, when to be made, &c.,	353
Ways in the county of Suffolk, board of aldermen in Boston to have powers of commissioners concerning,	242
county commissioners of Middlesex to have like powers in Chelsea, North Chelsea, and Winthrop,	242
parties may have jury, in said towns, as in other counties,	242
warrant for jury, to whom directed,	242

**HIGHWAYS—continued.**

verdict to be returned to superior court,	242
applications for laying out, &c., in Boston, how made,	242
parties aggrieved may have trial by jury in superior court upon application,	242
Ways in cities, what provisions apply to laying out, &c.,	242
Dedication of ways.	
ways dedicated to public use not chargeable to city or town, unless laid out and established according to law,	243
selectmen, &c., may close or caution public against entering on, such ways, if dangerous, &c.,	243
if not so closed, &c., city or town liable for damages arising from defects in,	243
abutters upon, to grade,	243
refusing to grade after notice, selectmen, &c., may grade at their expense,	243
expense of such grading to be assessed on, and to constitute lien on real estate,	243
selectmen, &c., may establish grade of such ways, and deposit plan in office of town clerk, &c.,	243
persons making improvements on land abutting on such ways to conform to grade,	243
grading by abutters not to be construed as a dedication to the public,	243
establishment of grade by selectmen, &c., not to be construed as acceptance of the way,	243
not to be dug up or obstructed without consent of selectmen, &c.,	243
Ascertaining location, selectmen, &c., upon representation of ten or more freeholders, to ascertain correct location of ways, &c., and file certificate, &c.,	243
Erection of monuments, &c., county commissioners, selectmen, &c., to erect permanent bounds of ways laid out by them,	244
if commissioners, &c., neglect to erect such bounds, on request of owner of land, county or town to be liable to such owner,	244
Ways over burying-grounds, not to be laid out or constructed through burying-grounds, except by special authority of law, or consent of town,	244
not to be laid out through private burial-ground without consent of proprietors,	244
penalty for so laying out, &c.,	322
REPAIRS OF WAYS AND BRIDGES, AND DAMAGES FOR DEFECTS IN.	
Public ways and bridges to be kept in repair at expense of town,	245
when several towns liable to keep bridge in repair, county commissioners may pass orders concerning the same,	245
towns to vote sums to be paid in labor, &c., for repairs of,	245
towns may raise money for repairs,	245
such money to be assessed and collected like other town taxes,	245
persons taxed may pay tax in labor, &c.,	245
towns may empower surveyors of highways to collect taxes,	246

**HIGHWAYS—continued.**

duties and powers of surveyors of highways,	245, 246, 247
towns may make contracts for repairs thereof,.....	246
watercourses in, to be regulated by selectmen, &c.,.....	246
surveyors may repair, with consent of selectmen when towns neglect to raise money,.....	246
damages occasioned by repairs of, to be determined by selectmen, &c., and paid by town,.....	247
benefit caused by repairs, &c., to be set off,.....	247
aggrieved party may apply for jury, or by agreement have committee to fix damages,.....	247
if life lost by defect in, county, &c., liable to fine of one thousand dollars; how and to whose use such fine shall be recovered,.....	247
damages caused by defect existing in, for twenty-four hours, to be recovered of town corporation, &c., liable to repair,.....	247
not to be recovered by party whose carriage and load exceed six tons,.....	247
defendants in such cases may make tender to plaintiffs,.....	247
to recover costs, if plaintiff does not recover more than amount tendered,.....	247
penalty on towns for neglect to repair,.....	247
finer imposed in such cases to be appropriated for repairs,.....	248
in suits for injuries, location not to be denied, if defendant has made repairs within six years,.....	248
Private ways and bridges, meetings of proprietors of, how called,.....	248
proprietors to choose clerk and surveyor, who shall be sworn,.....	248
may determine manner of calling future meetings,.....	248
may determine what repairs are necessary, and apportion money for same,.....	248
penalty on, for withholding proportion, and to what use, &c., recovered,.....	248
may contract for repairs,.....	248
may raise money to fulfil such contracts,.....	248
may choose assessors,.....	248
assessors to assess proprietors and deliver list and warrant to surveyor,.....	248
surveyor to have powers of surveyors of highways,.....	248
penalty for refusal to serve as, and to what use, &c., recovered,.....	248
may collect taxes,.....	248
penalty on, for neglect to pay over money thus collected,.....	248

**REGULATIONS AND BY-LAWS.**

Guide posts, to be erected, maintained, &c.,.....	249
Sidewalks, when and how made, &c.,.....	249, 250
provisions concerning removal of snow, &c., from,.....	250
By-laws, respecting pasturing cattle, and fast driving,.....	250

**BOUNDARIES AND ENCROACHMENTS.**

when buildings, fences, &c., shall be deemed boundaries of,.....	251
adjudged nuisances, taken down, &c., costs, how paid,.....	251
fences, &c., across, when and how may be removed,.....	251
Shade trees may be planted in,.....	251, 252

**HIGHWAYS—continued.**

penalty for injuring,.....	252
owner of beast damaging, liable,.....	252
may be set out at public expense, &c.,.....	252
associations for planting, how formed, &c.,.....	253

**HIRER.**

of personal property selling without written consent of owner, how punished,.....	368
---	-----

**HOLIDAYS, PUBLIC.**

Christmas, Fast, and Thanksgiving days, Twenty-second of February, and Fourth of July,.....	49, 250, 517
general court not to sit on, for transaction of ordinary business,.....	49
public offices to be closed,.....	49
courts not to be opened on, except, &c.,.....	517, 518
notes, &c., maturing on, when payable,.....	253

**HOLMES' HOLE.**

land on west chop of, ceded to United States,.....	44
--	----

**HOMESTEADS.**

of householder having a family, to value of eight hundred dollars, exempted from attachment, &c.,.....	524
how such homestead, &c., acquired,.....	524, 525
rights of, under former laws, preserved,.....	525
but none shall exceed in value eight hundred dollars,.....	525
mortgaged property subject to right of, but not as against mortgagee,.....	525
but when owner of residue above homestead and mortgage redeems mortgage, he shall not set up the same against owner of homestead, unless owner offers to redeem such residue in case of set-off on execution,.....	525
not exempt from levy for taxes, ground rent, &c.,.....	525
not to defeat previous liens,.....	525
may be conveyed, and how,.....	525, 540
partition of property subject to,.....	525
may be set off to owner in case of his insolvency,.....	525, 526
appraisers to be appointed in such case,.....	526
to be sworn,.....	526
duties of,.....	526
execution may be levied on property in which homestead exists if value of whole property exceeds eight hundred dollars,.....	526
appraisers to be appointed and their duties,.....	526
to continue after death of householder for benefit of widow and minor children.....	526
rights in, of widow and children, may be set off in same manner as dower,.....	526
how may be sold and money apportioned, &c.,.....	526
confirmation of conveyances under certain repealed laws,.....	526
how estate of, may be conveyed, in case of the insanity or guardianship of parties,.....	526, 540

**HOOPS AND STAVES.**

cullers of, to be chosen in maritime towns, and sworn,.....	527
quality and size of different kinds of,.....	527
fees for culling, and by whom paid,.....	527
penalty for fraud in culling,.....	527
hoops of different lengths to be put in distinct bundles,.....	527
bundles of less than thirty, or packed of less than required dimensions, to be forfeited,.....	527
and may be labelled, and sold for benefit of town,.....	527



**HOPS.**

- not to be exported, if growth of this state, without inspection, &c., ..... 267
- need not be reinspected, if grown and inspected in another state, ..... 267, 268
- quality of, and how packed, ..... 268
- how inspected, sorted, and branded, ..... 268
- penalty for shifting contents of bags without obliterating marks, ..... 268
- for altering or counterfeiting marks, ..... 268
- for intermixing after inspection, ..... 268
- for exporting, &c., uninspected, ..... 268
- to be forfeited, if exported, &c., without inspection, ..... 268
- when shipped coastwise, for inspection within the state, provisions not to apply, ..... 268, 269
- Inspector-general of, how appointed, and term of office, ..... 268
- to be sworn, and may appoint deputies, ..... 258, 267
- to give bond, ..... 267
- may require bonds of, and be responsible for deputies, ..... 267
- to make return annually to secretary of amount inspected by himself, &c., ..... 268
- or deputy to examine, sort, &c., all hops intended for exportation, ..... 268
- penalty on, for delay or fraud in inspecting, .... 268
- may seize and label hops, if shipped without inspection, ..... 268

**HORSE-RACING.**

- for money, &c., prohibited, ..... 826

**HORSE RAILROADS. (See Railroads.)**

- provisions respecting, ..... 870

**HORSES. (See Beasts.)**

- what and where taxable, ..... 76
- going at large contrary to law, &c., to be impounded, ..... 185, 186
- penalty for unlawfully taking and driving, ..... 801

**HOSPITAL.**

- may be established by town for reception of persons having dangerous diseases, ..... 192
- to be under direction of board of health or committee of town, ..... 192, 193
- not to be within one hundred rods of dwelling house in adjoining town, without consent, &c., ..... 193
- physicians, &c., of, to be under direction of board of health, ..... 193
- penalty on, for violating regulations, ..... 193
- to be provided by board of health when dangerous disease breaks out, ..... 193
- On Rainsford Island, inspectors and other officers, appointment of, ..... 400
- inspectors to establish rules and visit hospital, to make annual report ..... 400
- to make certain inventories annually, ..... 55
- superintendent to give bond, ..... 400
- inmates of, may be transferred by alien commissioners, ..... 397
- foreign paupers arriving, sick, to remain at, .... 400
- sick state paupers may be sent to, by towns, by permission of alien commissioners, ..... 400
- expenditures at, how to be approved, &c., ..... 400
- superintendent may complain in bastardy cases if woman refuses to complain, ..... 404
- State lunatic, at Worcester, Taunton, and Northampton, ..... 406-411

(See Lunatic Hospitals.)

**HOUSE OF REPRESENTATIVES, (see Representatives), ..... 34-39****HOUSE RENT.**

- debts for, to be deemed claims for necessities, ..... 472

**HOUSES.**

- when may be impressed, &c., for reception of the sick, ..... 190
- how cleaned, &c., by order of board of health, .... 189

(See Buildings.)

**HOUSES OF CORRECTION.**

- to be provided in every county, except Duke's county, ..... 144, 858
- at expense of county, except in Suffolk, ..... 144, 858
- in Suffolk, by aldermen, at expense of city of Boston, ..... 144, 858
- in Nantucket, by selectmen, ..... 143
- in other counties, by county commissioners, .... 858
- shall have convenient yards and workshops, &c., .... 858
- yards of, to be so fenced as to prevent communication and escape, ..... 858
- jails to be used for, and yards thereof fenced as above, till others are provided, ..... 858
- materials and tools for labor of convicts in, to be provided at expense of counties or city, ..... 858, 866
- to be provided by commissioners, or in Boston by directors, ..... 858, 859, 866
- expense of such materials, &c., how to be paid, ..... 863, 869
- of keeping, &c., convicts in, how paid when they and their kindred, &c., are not able, &c., ..... 864, 865, 866
- to be for safe keeping, correcting, employing, &c., of offenders legally committed thereto, ..... 858
- of those committed by the United States, except under the fugitive slave law, ..... 858
- may be used for confinement, &c., of convicts punishable, wholly or in part, by imprisonment in county jail, ..... 844, 845
- proceedings of justices and courts, before committing vagabonds, &c., to, ..... 820, 821
- rules and orders for restraint and government of prisoners in, how established, ..... 853, 859
- master and overseers of, to be appointed and removed by commissioners or city council, ..... 858, 860

**OVERSEERS OF.**

- to be two or three in number, ..... 858
- appointed annually by commissioners, except in Suffolk, ..... 858
- how removed and vacancies filled, ..... 858
- pay not to exceed one hundred dollars per annum, ..... 858
- to be determined by commissioners, ..... 858
- in Suffolk, directors of public institutions to be, ..... 858, 859
- city council to fix compensation of, ..... 858
- general powers and duties of, ..... 859
- to see that rules are observed, ..... 859
- may contract for work to be done in the house, ..... 859
- for letting to hire the prisoners in the day-time, ..... 859
- may discharge certain prisoners supposed to be reformed, ..... 859
- may discharge certain prisoners after six months from the time of sentence, ..... 859, 860
- may bind out as apprentices such persons during their sentence, ..... 859
- rights and duties of master, apprentice, &c., ... 859
- not affected by age of party bound, ..... 859
- if contract of service, &c., is ended, prisoner to serve out rest of sentence, if any, ..... 859, 860

HOUSES OF CORRECTION — *continued.*

authority of overseers to receive children of certain female convicts, .....	861
to oversee sentences of solitary imprisonment and hard labor, .....	862
may punish refractory prisoners, .....	862
to consider jailer's record of prisoners' conduct when recommending to executive clemency, .....	864
to audit accounts for support of convicts twice in each year and oftener, .....	865

## INSPECTORS OF.

in Suffolk, judge of probate court and justices of police court to be, .....	866
in other counties, the county commissioners, .....	866
returns to be made to, by master, .....	866
powers and duties of, .....	866, 867
to designate place of removal of prisoners, if pestilence breaks out in prison, .....	864
to have access to books, accounts, prisoners, &c., .....	867
may converse with prisoners apart from officers, .....	867
to notify district-attorney of violation of any law in relation to prisons, .....	867
to make annual returns to governor, .....	867
to transmit copies of information given district-attorneys, .....	867
to state expenses incurred in providing moral and religious instruction, .....	867
form of returns of, .....	868

## MASTER OF.

in Suffolk, to be appointed by city council, .....	860
in other counties by the sheriff, .....	860
how and for what cause may be removed, .....	860
to continue in office on death of sheriff, .....	861
until new sheriff is appointed, .....	861
or governor removes, or appoints new one, .....	861
when appointed by governor, to give bond with surety, .....	861
to appoint subordinate officers, .....	860
exempted from military duty, .....	98
compensation of, how to be established, .....	860, 865
shall keep calendar of prisoners, .....	860
penalty for neglect, .....	860
what the calendar shall contain, .....	860
duties as to bodies of deceased prisoners, .....	861
to give female prisoner custody of her child under eighteen months, .....	861
duties as to classification and separation of prisoners, .....	862
penalty for violation of this duty, .....	863
to furnish convicts with work, and govern them, .....	862, 863
shall have inspection of convicts let out to hire, and of their treatment, .....	859
shall make returns, twice a year, to inspectors, of state, &c., of houses; contents of such returns, .....	863, 867
to exhibit books, papers, &c., to inspectors, .....	867
to keep record of conduct of convicts, .....	864
in case of pestilence, may remove prisoners to designated place, .....	864
not to contract for support of insane paupers without consent of commissioners, under penalty, .....	412
to supply fuel, clothing, and bedding to convicts, at county expense, .....	865
to obey commissioners or aldermen as to specific rations to be furnished to convicts, .....	865
penalty for disobedience, .....	863, 865
duty of, when inspectors visit, .....	867

HOUSES OF CORRECTION — *continued.*

duty of, as to rogues committed, &c., .....	620
to receive and account for moneys advanced for materials, tools, &c., for convicts, .....	865
to expend moneys so advanced, under direction of commissioners, or mayor, .....	865
to keep account of earnings of convicts, and of materials furnished them, &c., .....	865
to dispose of articles made by convicts, and keep accounts of the proceeds, &c., .....	865
to pay into county treasury, as commissioners, &c., direct, the amount of sales, proceeds of labor, &c., .....	865
duties of, as to keeping houses clean, .....	861
no permanent vault to be used, .....	861
duties as to personal cleanliness, comfort, and food of prisoners, .....	861, 862
to furnish Bibles or Testaments to convicts that can read, &c., .....	862
to provide moral and religious instruction, .....	862
to receive compensation for board of convicts, and for services, .....	860, 865
not to furnish spirituous or mixed liquors to those in confinement, .....	862
penalty for so doing, .....	862
to notify cities or towns when persons are committed whom they are liable to support, .....	866
not to pay rent for dwelling-houses provided for them by counties, .....	869

## CONVICTS IN.

how to be treated, when sentenced to solitary imprisonment and hard labor, .....	862
when refractory, or refuse to labor, .....	862
when disorderly, or wilfully injure house or furniture, &c., .....	862, 863
not to have spirituous liquor, wine, strong beer, or cider, unless by prescription of physician, .....	862
penalty on master and others for furnishing such liquors, .....	42
male and female to be kept in separate rooms, .....	42
minors to be separated from notorious offenders, .....	42
those committed on charge of crime to be separated from convicts, .....	862
those sentenced for different degrees of crime to be kept separate, .....	862
not more than two to occupy same room except for work, unless houses are crowded, .....	42
penalty on master for violating these provisions, .....	42
may be visited by any clergyman they desire, .....	42
how may be removed, if exposed to dangerous sickness, or to fire, .....	864
how punishable for breaking prison and escaping, in different cases, .....	864
liable to double damages, in action for trespass, for injury to houses, furniture, &c., .....	862, 863
by whom vagabonds, &c., may be discharged on reformation, .....	79
sentence of, on second conviction after being thus discharged, .....	80
expenses of, may be recovered of convicts, .....	47
or of their kindred, .....	87, 47
with infectious diseases may be removed to hospital, &c., by order of board of health, .....	24
return of removal to be made to court ordering commitment, .....	11
such removal not an escape, .....	11
paupers discharged from, to be removed to state almshouses in certain cases, .....	41, 42

**HOUSES OF CORRECTION—continued.**

- if convict is too sick to be removed, how provided for,..... 402  
 officers of, exempted from military duty,..... 98

**HOUSES OF INDUSTRY.**

- powers, &c., of keepers and directors of, in respect to certain persons committed to,..... 820  
 punishment for escape from,..... 864

**HOUSES OF ILL-FAME.**

- to be deemed common nuisances,..... 454  
 penalty for keeping,..... 454, 818  
 use of premises as by tenant, to avoid lease,..... 454  
 penalty on landlord for letting house to be used as,..... 454  
 lease of house so kept, void at option of lessor,..... 818, 819  
 remedy of lessor to recover possession,..... 819

**HOUSES OF RELIGIOUS WORSHIP.**

- and furniture, &c., therein, exempted from taxation,..... 74

**HOUSEHOLD FURNITURE, &c.**

- what exempted from taxation,..... 74  
 exempted from distresses for taxes,..... 82  
 from attachment and execution,..... 624, 688

**HOUSEHOLDERS. (See Boarding Houses.)**

- to give notice, under penalty, to board of health, &c., of dangerous diseases,..... 188

**HUMANE SOCIETY.**

- injury, removal, &c., unlawfully of property, &c., of, how punished,..... 806  
 of life boats, &c., of,..... 806  
 pilots, commissioners of wrecks, &c., to make complaint,..... 806

**HUM SANDS.**

- buoy on, ceded to United States,..... 44

**HUSBAND. (See Married Woman.)**

- certain provisions respecting husband and wife,..... 589-542  
 in case of divorce, rights of, in property of wife, &c.,..... 535  
 may be examined on oath as to personal property of wife,..... 536  
 alimony, &c., in estate of,..... 535, 536  
 property, &c., of married women not subject to control of, or liable for his debts,..... 537, 538  
 not liable for contracts of wife made in reference to her separate property, trade, &c.,..... 538  
 married after June 3d, 1868, not liable for debts, &c., of wife, contracted before marriage,..... 588  
 judgments against wife to be enforced against, in certain cases,..... 542  
 when to hold wife's lands after her decease as tenant by curtesy,..... 471, 475, 539  
 does not become administrator, guardian, &c., in right of his wife,..... 504, 546  
 entitled to wife's personal property on her decease,..... 485  
 to administer on wife's estate,..... 483  
 when not punishable as accessory after the fact of felony committed by wife,..... 826

**HYANNIS IN BARNSTABLE.**

- land at, ceded to the United States,..... 45

**HYPOTHECATION.**

- of ship or vessel, record not necessary to validity of,..... 767

**I.****ICE.**

- intended for merchandise, punishment for wilful, &c., injury to,..... 804  
 companies for cutting, selling, &c., how formed, &c.,..... 341, 848

**IDIOTS.**

- having no known settlement, may be sent to state almshouse,..... 401  
 fees allowed to officers in such cases,..... 401

**IDLE AND DISORDERLY PERSONS.**

- common, how punished,..... 820, 821

**IDLE AND DISSOLUTE PERSONS.**

- going about begging, how to be arrested, secured, and punished,..... 820, 821

**ILLEGITIMATE CHILDREN, (see Bastards, Children.)**

- ..... 404, 474, 534, 549

**ILL-FAME, HOUSES OF.**

- deemed common nuisances, how suppressed, and penalty for keeping,..... 454, 818, 819

**IMMIGRATION.**

- of certain persons, provisions respecting,..... 5

**IMPEACHMENTS.**

- made by house of representatives, and tried by senate,..... 20, 21  
 under federal constitution,..... 2  
 house of representatives has sole power,..... 2  
 senate has sole power to try,..... 3  
 proceedings in trials of,..... 3, 7  
 how, when the president of the United States is tried,..... 3  
 judgment and sentence,..... 3

**IMPEACHMENTS—continued.**

- party convicted still liable to indictment,..... 3  
 president cannot pardon, &c., cases of,..... 6

**IMPLEMENTS.**

- what exempt from attachment and levy on execution,..... 624, 688  
 of burglary, making, mending, or keeping, how punished,..... 799  
 of gaming, provisions respecting keeping of,..... 435, 438

**IMPORTATION.**

- of certain persons, provisions respecting,..... 5

**IMPOUNDING.**

- of cattle doing damage, or illegally at large,..... 185, 186

**IMPRESSMENT.**

- of houses, nurses, &c., for sick,..... 191

**IMPRISONMENT. (See Poor Debtor.)**

- no person subject to, but by the judgment of his peers or the law of the land,..... 15  
 forcible or secret, without authority, how punished,..... 794  
 relief from illegal, how obtained by habeas corpus,..... 734-742  
 on mesne process and execution, how made and relieved from,..... 633, 641  
 of poor debtors for fraud,..... 633, 639  
 of persons committed on warrants of distress in favor of the state, how relieved from,..... 638  
 of insane persons, on mesne process or execution, how they may be removed or discharged,..... 639, 640

**IMPROVEMENT.**

of meadows, beaches, swamps, &c., how may be made by proprietors,.....750-753

**IMPROVEMENTS ON REAL ESTATE.**

when and how allowed to tenants in real actions, on recovery of judgment by demandants,.....698

(See *Real Actions*.)

how and when to respondents in petitions and suitw for partitions,.....708

made after first partition by probate court, how compensated for when second partition is ordered,.....706

how recovered in informations for intrusion and writs of entry, by parties not concluded by judgments therein,.....718, 719

**IN WRITING.**

the term to include printing, engraving, &c.,.....52

**INCEST.**

how punished,.....818

**INCIDENTAL EXPENSES.**

in appropriation bills, what to include,.....140

**INCOME.**

from profession, trade, &c., how taxable,.....74

from property subject to taxation, not to be taxed,.....74

**INCOMPATIBILITY.**

of offices,.....80, 83, 49, 149, 742

**INCORPORATION.**

acts of, notice of petitions for, how to be published,.....47

to specify amount of capital stock,.....48

to be deemed public acts,.....50

**INDENTURE OF APPRENTICESHIP, (see *Apprentice*.)**.....549, 550**INDIANS.**

polls and estates of, exempted from taxation,.....75

guardians and treasurers of, tenure of office,.....138

appropriations for support of schools for,.....218

prohibitions as to digging, &c., shell fish, not to extend to,.....438

lands held in trust for, how recovered against persons unlawfully entering or intruding upon, or holding same,.....719

**INDICTMENT.**

persons not held to answer to second when, &c.,.....790

for larceny, or destruction of wills, &c., what need not state,.....798

at trial of, certain disclosures not to be evidence,.....798

forms of, in certain cases of embezzlement,.....800

need not specify particulars of embezzlement,....800

against receivers of property, knowing it to be stolen, need not aver conviction of thief,.....801

how to allege intent to defraud,.....809

in cases of malicious gathering up and retaining of bank bills,.....810

against mother for murder of infant bastard,.....818

by grand jury nece sary to hold one to answer for alleged offences,.....790

except when process by information is expressly authorized by statute,.....790

and in proceedings before justices' and police courts, and before courts martial,.....790

for offences, except murder, to be found and filed within six years,.....839

for capital crimes to be found in superior court,....839

to be transmitted to supreme court at next term thereof for the county, and there entered and tried,.....839

**INDICTMENT—continued.**

in Dukes county, to be transmitted to next term of supreme judicial court for Barnstable county, and there tried,.....839

notice of, to be forthwith given to chief justice of supreme court,.....839

process on, for arrest of defendant, if not in custody, to issue forthwith,.....839

copy of, to be immediately served on defendant, if in custody, .....839

person indicted for offence punishable with death, or imprisonment for life in the state prison, to have list of jurors delivered to him, and his witnesses summoned at the expense of state,.....839

copy of, and of indorsements on, to be given, without fee, to every defendant in custody or under recognizance, if for an offence punishable in state prison,.....839

for felony, not to be disclosed by officers of court, nor grand jurors, if defendant be not in custody, nor under recognizance,.....839

for forgery, or other offence, where an intent to defraud is required to constitute the offence, indictment sufficient if it alleges generally an intent to defraud, without naming any particular person, &c., intended to be defrauded,.....839

not vitiated by certain formal defects,.....843

provisions as to pleas to,.....840

for certain misdemeanors, may be stayed upon reparation to party injured, &c.,.....839

persons held in prison, to be tried at next term after six months' time of imprisonment,.....840

or be bailed on their own recognizance,.....840

issues of fact in, how to be tried,.....840

certain defects of form not to vitiate,.....843

of railroad corporation, for loss of life, to be prosecuted within one year,.....843

on trial of, for forfeitures, jurors not to be challenged on account of paying taxes in any county, city, or town,.....853

For capital crimes, to be tried in supreme court held by four justices,.....853, 854

in counties where no law term is established, special session to be held,.....855

court, how convened in such cases,.....855

special term to be held for trial of, if no stated term is held within six months,.....855

notices of such term, how given, and what may be done at the same,.....855

if found in Dukes county, to be tried in Barnstable, .....855

special session therefor, how notified,.....855

forms of, for murder, not changed,.....731

**INDIGO.**

not to be sold by pedlars,.....23

**INDORSERS.**

On promissory notes, may be sued with maker,.....621

form of declaration against,.....621

of notes on demand, not to be charged, unless demand is made on promisor within sixty days,.....23

liability of,.....23

Of civil process, required on original writs, writs of audita querela, *acire facias* in certain cases, petitions for certiorari, and bills in equity, before entry, if no

**INDORSERS — continued.**

one of plaintiffs is an inhabitant of this state, .....	622
of petitions for partition, .....	699
liability of, in such case, .....	657
may be required after entry of action or writ, in certain cases, .....	657, 699
if insufficient, or he removes from state, new indorser may be required, .....	657
if not procured according to order of court, suit to be dismissed, with costs, .....	657
may be stricken off by permission of court, and a new one substituted, .....	657
liability of, in all cases, for costs from commencement of suit, .....	657

**INDUSTRIAL SCHOOL FOR GIRLS.**

government of, to be vested in seven trustees, .....	418
Trustees, how appointed, and tenure of office, .....	418
to receive no compensation, except for expenses incurred, .....	418
general powers and duties of, .....	418
to appoint superintendent and other officers, .....	418
to determine salaries of officers, subject to approval of governor and council, .....	418
may expend money given for the erection of buildings, &c., .....	417
may make, &c., by-laws, .....	418, 414
may discharge and bind out inmates, .....	415
may cancel indenture of apprenticeship, .....	415, 416
to be guardians of girls bound out, .....	416
duties of, as to instruction of girls, selection of masters, &c., .....	416
one or more to visit school at least once in two weeks, &c., .....	417
to make quarterly examinations, .....	417
abstract of quarterly reports, &c., to be laid before governor and council annually, .....	417
to make certain inventories annually, .....	55
Treasurer of, to be appointed by governor and council, .....	414
to give bond, .....	414
to receive, &c., legacies, donations, &c., .....	414
to submit detailed account, annually, to governor and council, .....	417
Superintendent of, how appointed, .....	418
duties of, .....	416, 417
to give bond, .....	416
to have charge of property within precincts of school, .....	416
to keep accounts of receipts and expenditures, and account to treasurer, .....	416
books, &c., of, to be open at all times to inspection of trustees, .....	416, 417
to keep register of girls, &c., .....	417
to make all contracts on account of the institution in writing, &c., .....	417
may sue and be sued on such contracts, .....	417
suit by, or against, not to abate by reason of vacancy in office, .....	417
annual report of, to be laid before governor and council, .....	417
Commitments to, by whom and how made, &c., .....	414
girls between seven and sixteen years of age, for what causes, may be committed to, .....	414
summons to be issued to parents, &c., of, and how served, .....	414, 415
second commitment may be made without summons to parents, &c., .....	415
examination, trial, &c., .....	414
form of warrant of commitment, .....	414

**INDUSTRIAL SCHOOL, &c. — continued.**

variance from such form, when not material, .....	414
courts may transfer girls held for criminal offences, to judges, &c., authorized to commit, .....	415
fees allowed to judges and officers, .....	415
girls ordered to be committed to, may appeal, .....	415
to be kept in school until bound out, &c., .....	415
may be discharged or bound out by trustees, .....	415
indenture of apprenticeship of, not to be assigned, .....	415
except in case of death of master, with consent of girl, approved by trustees, .....	416
but may be cancelled by trustees, in certain cases, .....	415, 416
may be discharged from apprenticeship by judges, &c., on complaint of trustees, for cruelty, &c., of master, .....	416
trustees to be guardians of, when bound out, .....	416
provisions for instruction of, &c., .....	416
register of, how to be kept, .....	417

**INFORMATION OF INTRUSION.**

how prosecuted by attorney-general or district-attorney against parties unlawfully entering or intruding upon, or holding lands of, the commonwealth, .....	717, 718
to be filed in supreme court in any county, .....	717
shall describe the lands and set forth title of commonwealth, .....	717, 718
summons, how issued, served, and where returnable, .....	717, 718
when title of state is founded on forfeiture for breach of condition in conveyance by state or by the colony of Massachusetts Bay, suit therefor not to be commenced unless by order of legislature, .....	718
in other cases, attorney-general or district-attorney may commence suit, when he has reason to believe title of the state can be established, .....	718
public notice to be given in case of supposed escheat, and of persons interested whose names are unknown, .....	718
any person claiming an interest, although not named as a party, nor served with process, may appear and answer in suit, .....	718
costs, how allowed, .....	718
if commonwealth prevails, defendant to be allowed for improvements, and to be charged with rents and profits, as in writs of entry, .....	718
commonwealth to be deemed seized upon judgment rendered without writ of possession, .....	718
judgment conclusive against defendants who appear and those who were summoned in this state, .....	718
persons not concluded by the judgment may bring writ of entry to recover the land of commonwealth, .....	718
if commonwealth is seized, action to be brought against tenant, or occupant, and additional service made on attorney-general, or district-attorney, .....	718, 719
if commonwealth has granted the estate, action to be brought against tenant of freehold, .....	719
if demandant is entitled to the premises, he	

**INFORMATION OF INTRUSION — continued.**

- may have judgment and execution in common form, ..... 718
- if he recovers judgment, he shall be entitled to rents and profits, and chargeable with improvements, ..... 719
- costs, how awarded and paid, ..... 719
- For Indian lands, when any person unlawfully enters into, intrudes upon, or holds lands, the title to which is in the state, trustees, guardians, treasurers, or agents for Indians, how proceeded against, ..... 719
- information to be filed in superior court in county where lands lie, by attorney-general or district-attorney, ..... 719
- to be filed by district-attorney, when he has reason to believe land can be recovered, ... 719
- proceedings to be as in cases of information above mentioned, but if judgment is for commonwealth, execution may issue, ..... 719
- title upon such judgment, when trustees, guardians, treasurers, or agents are interested, to vest in them, and in other cases, in the state, in trust, ..... 719
- in nature of quo warranto, by whom, and where, may be filed proceedings thereon, ..... 744
- persons held to answer under, ..... 780

**INHABITANTS.**

- who deemed to be, ..... 19, 51
- census of, when and how to be taken, ... 38, 39, 167, 168

**INHERITANCE, &c.**

- by right of representation, how construed, ..... 475

**INJUNCTION.**

- to stay waste, may be issued by supreme court, or a single judge, in term time or vacation, after commencement of suit concerning waste, ..... 710
- may in like manner be issued by any court in which proceedings are pending, when person whose estate is attached, or against whom a real action is brought on a mortgage, or for recovery of land, commits or threatens waste, ..... 710
- court may require applicant to give bond, ..... 710
- if disregarded, court may commit defendant, or may issue other processes, ..... 710
- may be dissolved by judge in term time or vacation, ..... 710
- may be issued by supreme or superior court, to prevent or stay waste, when action concerning a nuisance is pending, ..... 711
- how issued and dissolved in such cases, ..... 711
- supreme judicial court may issue, after granting writ of audita querela, ..... 743
- or pending an application for a certiorari, ..... 743
- after leave to file an information in the nature of a quo warranto, ..... 744

**INNOLDERS AND COMMON VICTUALERS.**

- may be licensed by county commissioners, upon certificate of approval by selectmen, .... 455, 456
- penalty for acting as, without license, ..... 455
- license to specify street, &c., where employment may be exercised, ..... 455
- not to protect, if employment is exercised elsewhere, ..... 455
- when to expire, ..... 456
- list of, licensed preceding year, to be sent to selectmen by clerk of commissioners, ..... 456

**INNOLDERS, &c. — continued.**

- applications for licenses, how to be made, &c., ..... 455
- to entertain travellers, &c., under penalty of revocation of license, &c., ..... 456
- not to entertain other than travellers on Lord's day, &c., under penalty, ..... 454
- not to allow implements of gaming to be used on premises, under penalties, ..... 455
- how liable for loss of property of guests, ..... 455
- liable only for reasonable care, in case of loss by fire, &c., ..... 456
- may show negligence of guests, or their non-compliance with reasonable regulations brought to their notice, ..... 456
- to put up signs, with name and employment thereon, under penalty, ..... 457
- further penalties to be imposed in case of subsequent convictions, &c., of certain offences, ..... 457
- not to give credit to students, under penalties, .... 457

**INQUEST ON DEAD BODIES.**

- to be taken by coroners, on view of, where death is supposed to have been caused by violence, ..... 848
- and in all cases of death from railroad accident, ..... 849
- railroad corporation to notify coroner, ..... 849
- coroner, on notice of such death, to issue warrant for summoning six jurors, if authorized in writing, ..... 849
- form of warrant directed to constable, ..... 848
- warrant to be served and returned by constable, under penalty, ..... 848
- jurors to attend, when summoned, under penalty, ..... 848
- penalties on constable and jurors, to be recovered by coroner, to use of county, ..... 848
- if six jurors do not appear, takersmen to be returned, ..... 848
- no person shall serve on such jury oftener than once in twelve months, ..... 849
- coroner may issue subpoenas for witnesses, ..... 849
- to administer oath to jurors and witnesses; form of oath, ..... 848, 849
- testimony of witnesses to be reduced to writing, and subscribed by them, ..... 849
- inquisition to be secret, if coroner and majority of jury order, ..... 849
- compensation of clerk, surgeon, chemist, &c., ... 849, 850
- jurors to make inspection of dead body, ..... 849
- after hearing evidence, &c., to make and deliver to coroner their inquisition, ..... 849
- form of jurors' inquisition, ..... 849
- if jurors find that murder, &c., has been committed, witnesses shall be bound over to next court, &c., ..... 849
- coroner may commit witnesses who refuse to recognize, ..... 849
- to return to court the inquisition, and other papers, ..... 849
- may issue process to bring persons charged by the jury before a magistrate for examination, ..... 849
- to cause bodies to be buried, whether an inquest be taken or not; at whose expense, ..... 849
- expense of, and of burial, by whom paid, in different cases, ..... 849
- of bringing to land dead bodies found in the water, ..... 849
- of bringing the dead body of a stranger, ..... 849
- how audited and paid, ..... 849

**INQUEST, &c. — continued.**

justice of peace to act as coroner when there is no coroner in a town, &c. .... 860

**INSANE PERSON.**

words, what to include, ..... 51  
by whom and how committed to state lunatic hospitals, ..... 407-409  
persons applying for commitment of, to give notice to selectmen, &c., ..... 407  
to file statement; contents thereof, ..... 408  
may have jury of six to determine whether they are furiously mad, ..... 408  
jury, how selected, empanelled, &c., ..... 408  
deficiency in number of, how supplied, ..... 408  
verdict of, to be final, ..... 408  
fees of, ..... 408  
judge to preside at trial, ..... 408  
expense of trial, how allowed and paid, ..... 408  
fee of judges for committing and discharging, ..... 408  
of officers, for committing, &c., to be same as for commitment to prison, ..... 408  
court may make further allowance, ..... 408  
having no known settlement, may be sent to state lunatic hospital, ..... 409  
expenses of support in hospital, by whom paid, and how recovered, ..... 409  
fees of magistrates, &c., in such cases, ..... 409  
presence of, may be required or dispensed with by judge, at hearing, ..... 409  
when town pauper, at what rates to be admitted to state hospitals, ..... 409  
expenses of support in hospital, and of removal, by whom paid, and how recovered, ..... 409  
how discharged and removed from hospital, ..... 410  
may be removed from hospitals to jails, &c., ..... 410  
removed from state hospitals to jails, &c., to be under charge of county commissioners, ..... 410  
where to be confined, ..... 411  
remedies of counties, &c., for support of, when so removed, ..... 410  
rates of pay allowed by commonwealth, in such cases, for lunatic having no known settlement, ..... 410  
confined in jails, &c., may be removed to state hospital by order of governor, ..... 412  
by order of trustees of state hospital, how discharged or removed, ..... 412  
incurable, when may be removed from hospital, ..... 410  
question whether incurable, may be tried by jury of six, ..... 410  
may be recommitted, if not comfortably supported or is dangerous, ..... 411  
not to be discharged from hospital without suitable clothing, ..... 411  
(See Lunatic Hospitals.)  
County receptacles for, to be provided by county commissioners, ..... 411  
special provisions concerning, for Essex county, ..... 411  
persons removed from state hospitals to jails, to be confined in, ..... 411  
insane person not furiously mad, having settlement within state, may be committed to, ..... 411  
how and by whom committed, in such case, ..... 411, 412  
presence of lunatic may be required or dispensed with, at hearing, ..... 412  
party entitled to a jury, ..... 412  
liable for support of such persons in, ..... 412

**INSANE PERSON — continued.**

how may be discharged or removed from, ..... 412  
keeper of, not to contract for support of insane paupers without consent of commissioners, ..... 412  
penalty for violation of this provision, ..... 412  
fees of magistrates, &c., in cases of commitment or discharge from, ..... 412  
In prison, charged with crime, duty of grand jury concerning, ..... 888  
acquitted or not indicted by reason of insanity, to be removed to hospital, ..... 888, 841, 842  
when and how to be removed from state prison, ..... 878  
from other prisons, ..... 878  
on mesne process, &c., how discharged, ..... 689, 640  
under sentence of death, warrant for execution may be delayed or respited, ..... 847  
Guardian of, how appointed, ..... 543, 544  
powers and duties of, ..... 544  
may prosecute and defend suits against, commenced before insanity, ..... 860  
how previous contracts in writing for conveyance of real estate may be enforced by or against guardian, ..... 676

**INSOLVENCY, COURTS OF.**

**COURTS, JURISDICTION, OFFICERS, &c.**

courts established in each county to be courts of record, ..... 581  
have jurisdiction of insolvency in their respective counties, ..... 581  
of cases of partnership in county where either partner resides, ..... 587  
of cases transferred from commissioners and masters in chancery, ..... 601  
to be held at shire towns at times appointed by judge, and at other convenient places, ..... 581  
and meetings may be adjourned, and all things done at adjournment to have like effect as if done at original meeting, ..... 581  
may be adjourned by register in certain cases, ..... 582  
rules of, how made, ..... 582  
order in, how kept, ..... 581  
officers of, how appointed and paid, ..... 581, 582  
proceedings of, to be matters of record, numbered and filed, ..... 581  
copies of records and prior proceedings filed with register to be prima facie evidence, ..... 581  
docket to be open to public inspection, ..... 581, 582  
warrants, processes, and orders of, to be under seal, how served and returnable, ..... 582  
parties having business in, may designate newspapers in which to have their notices published, ..... 582  
counties to furnish court rooms and fire-proof rooms for records, ..... 582  
expenses of, to be paid out of state treasury, ..... 582  
Judges and registers of probate and insolvency to be judges and registers of, ..... 581  
Judge to receive applications and issue warrants, ..... 582, 583, 590, 596  
to approve election of assignee; may add others, or order new election, ..... 596  
may require bonds of assignees, ..... 596  
to assign debtor's property, ..... 596  
may order attachments to survive, ..... 596, 587  
may approve bonds, and do other acts out of court, ..... 581  
keep order in court and punish for contempt, ..... 581  
administer oaths, issue commissions, take

INSOLVENCY — *continued.*

testimony, compel attendance of witnesses, and appoint necessary officers,....	581
may make orders concerning time, place, and manner of sale of debtor's estate,.....	587
may order money in hands of assignee to be deposited or invested,.....	587
may order messenger to sell perishable property,.....	588
perishable property, to which the title is in dispute, to be sold,.....	588
may remove assignees, and permit them to resign,.....	588
may commit assignees for disobeying orders,....	589
may, by warrant, require jailer to bring debtor, if in prison, into court for examination,.....	589
may examine, or appoint some one to examine, debtor out of court,.....	589
may commit debtor, if he refuses to obey order of court,.....	590
may order meetings to be called,.... 588, 590, 591, 595	
may order meetings, omitted to be called within the time prescribed by law, to be subsequently called with like effect,.....	590
may order register to notify meetings in certain cases when assignee neglects,.....	590
shall appoint second and third meetings,.....	590
may cite and examine persons suspected of concealing, embezzling, or conveying away property,.....	597
to make returns to secretary of commonwealth,.....	600
<i>(See Judges of Probate and Insolvency.)</i>	
<b>Register,</b> to keep docket, make computations of dividends, furnish certain copies to assignees, and administer oaths,.....	581
may adjourn court or meeting when judge is absent, or there is no judge,.....	582
may certify copies of records of cases in court, and of prior proceedings filed in his office,.....	581
fees of, for copies,.....	582
to make and certify list of claims proved,.....	585
shall receive the deposit by debtor, and all fees of court, and account with state treasurer quarterly,.....	600
not to be assignee in his county,.....	602
<i>(See Registers of Probate and Insolvency.)</i>	
<b>Supreme judicial court</b> to have general superintendence of,.....	582
may hear and determine cases from, as a court of equity, in term time or vacation,.....	582
may make rules for, at law term,.....	582
<b>INSOLVENCY PROCEEDINGS.</b>	
<b>Accounts</b> to be rendered by assignee when certain amounts are collected, or on order of judge,.....	588
at third meeting,.....	594
again within eighteen months,.....	595
<b>Adjournment</b> of courts and meeting,..... 581, 582	
<b>Allowance</b> to debtor, for attendance, support of, and percentage on estate, in certain cases,.....	594
in case of partners and partnerships,.....	597
of all surplus, if any, after debts are paid,....	594
if not paid to debtor while living, may be paid to his representatives,.....	594
<b>Appeal,</b> how taken to superior court, notified, entered, and proceeded in by creditor or as-	

INSOLVENCY — *continued.*

assignee, in case of allowance or disallowance of claim,.....	585
how, in case of allowance and disallowance of discharge,.....	582
may be waived,.....	582
<b>Application</b> by debtor,..... 582, 585	
by creditors,.....	585
<b>Assignee,</b> to be chosen at first meeting; choice how made,.....	585
choice of, subject to approval of judge, who may appoint additional assignees, or order new election,.....	585
if not chosen by creditors, judge may appoint,.....	585
how chosen or appointed in case of vacancy,....	585
in case of partnerships, to be chosen by joint creditors,.....	587
person having received preference not to be, nor to vote for, assignee,.....	590
bond may be required of, shall be filed; how sued,.....	595
failing to give bond, to be removed,.....	595
may be removed by creditors with consent of judge,.....	598
by judge in certain cases,.....	598
may resign,.....	598
effect of death, resignation, or removal of,....	599
to execute necessary papers to co-assignee or successor, upon resigning or being removed,.....	599
refusing to execute papers, or disobeying order of judge, may be committed,.....	599
to give notice of appointment, and have assignment recorded,.....	598
of meetings and dividends to creditors,.... 587, 595	
to demand and receive from messenger and other persons all debtor's estate,.....	597
may cause persons suspected of concealing property to be cited to answer questions,.....	597
may commence and prosecute suits, which shall not abate by death or removal of, and new assignees may prosecute same,.....	597
may recover property or value thereof, in case of fraudulent preferences,.... 582, 594	
avoid payments and sales made by debtor in contemplation of insolvency,.....	594
authority to sue proved conclusively by assignment,.....	594
powers and duties of, respecting attachments ordered to survive,..... 588, 592	
not to allow to creditors certain set-off, obtained within six months,.....	597
may, with consent of judge, settle claims by compromise or arbitration,.....	597
sell perishable property, the title to which is in dispute, and hold proceeds to await determination of title,.....	597
sell real and personal estate in his discretion, or according to any order of the court,.....	597
how may sell franchises of corporations authorized to take toll,..... 594, 595	
may, with consent of judge, sell outstanding claims,.....	597
claims sold by, may be sued in name of purchaser, who alone shall be responsible for costs,.....	597
to keep regular accounts, to which creditors shall have free access,.....	597



INSOLVENCY — *continued.*

to keep separate accounts of joint and separate estates of partners, .....	597
money collected by, to be kept separate, or deposited in bank, and judge may order deposit or investment thereof, .....	597
may appeal to superior court from allowance of claims, and proceedings thereon, .....	595
from debtor's discharge and proceedings thereon, .....	592
to render accounts when certain amounts are collected, or on order of judge, .....	598
at third meeting, .....	594
again within eighteen months, .....	595
compensation of, .....	598
Assignment of all debtor's estate to be made by judge to assignee, .....	596
of the estates and franchises of corporations, .....	598
to be recorded in registry of deeds, .....	596
effect of, and what property passes by, .....	596
conclusive evidence of assignee's authority to sue, .....	597
Attachments dissolved by assignment, .....	596
how ordered to survive, and prosecuted by assignee for benefit of all creditors, .....	596, 597
attachments, dissolved by, and how ordered to survive, and proceedings thereon, .....	596, 597
when sufficient cause for instituting proceedings against a debtor, .....	596
when against corporations, .....	599
Commissioners of insolvency, and masters in chancery, to finish cases commenced before them, .....	601
fees thereof, .....	601
cases before them may be transferred to courts of insolvency, in certain cases, .....	601
when closed, records and papers to be deposited in office of register of court of insolvency, .....	601
Concealment of property by any person, he may be cited and examined under oath, .....	597
by debtor, punishment therefor, .....	596, 597
Corporations, proceedings by, except railroads and banks, .....	598
against, for not dissolving attachments, and other causes, .....	599
warrant to contain order requiring messenger to state further that corporation is forbidden to make contracts, .....	598
claims may be proved at any time before making final dividend, .....	598
officers of, to furnish schedule, and do other acts, in like manner as debtor, .....	598
sale of franchises of such as are authorized to take tolls and proceedings thereafter, .....	598, 599
damages against, for land and materials taken, &c., preferred claims, .....	599
discharges not to be granted to officers or members, .....	599
mortgages by, not invalidated by insolvency proceedings, .....	599, 600
foreclosed, pending proceedings by or against, and before choice of assignee, may be redeemed by assignee within sixty days, .....	599
proceedings to be generally like those in case of insolvent debtors, .....	598
Costs and fees of court, amount of, and how paid and accounted for, .....	600

INSOLVENCY — *continued.*

of messenger, how returned and paid, .....	600
of suits, when and how preferred in distribution of estates, .....	600
costs against parties may be allowed by court, and execution issued, .....	600
in cases still pending before commissioners and masters in chancery, .....	601
Creditors, how may prove their claims, .....	583, 584, 585
how and when proof may be by agent, .....	584, 585
how, when they have security, .....	584
may take oath before justices of the peace, .....	585
may appeal if claims are disallowed in whole or in part, .....	585
may act by attorney, .....	585
may have original papers used in proof of claims by leaving copy, .....	585
may deliver up security, or on leave sell same, and prove the balance, .....	584
fraudulent preferences received by, void, and property or value may be recovered by assignee, .....	593, 594
may set off claims, if not procured within six months, .....	584, 587
may assent to discharge, although allowance of their claims is appealed from, .....	592
Debts and claims may be proved at any meeting, .....	583
what claims may be proved, .....	583, 584
how proved when creditor has security, .....	584
mutual debts to be set off, and balance only proved or paid, .....	584
except certain claims procured by creditors within six months, .....	587
oath to be taken on proof of claim, form of, .....	584
may be taken before justice, .....	585
by agent in certain cases, .....	584
other proof of, may be required, and debtor and creditor examined, .....	585
not to be allowed unless statements on oath are true, .....	584
when creditor has received preference thereon, .....	585
proof of, may be postponed until after choice of assignee, .....	585
creditors may act by attorney in relation to, .....	585
original papers used in proof of, may be withdrawn and copy filed, .....	585
when proved, list to be made and certified, .....	585
what entitled to priority in distribution of estate, .....	594, 595, 599
what are, and what not, affected by discharge, .....	591, 592
proved after dividend is made, not to disturb same, .....	595
appeal to superior court from allowance of claim may be taken by assignee, or from disallowance, by creditor, .....	585
how claimed, notice of given, and entered, and proceedings thereon, .....	585
may be waived, .....	585
Debtor, application by, for benefit of insolvent laws, how may be made, .....	582
to deposit forty dollars on making application; disposition of the money, .....	600
if assets are not sufficient to pay the fees, debtor to pay them, .....	600
court may issue execution therefor, payable to register, .....	600
to furnish schedule of creditors to messenger within three days, .....	583
to file schedule of property at first meeting, .....	

INSOLVENCY — *continued.*

or within such further time as judge may allow, .....	588
may amend schedule at second meeting, .....	590
to deliver property to messenger, .....	588
to do all acts and execute all papers necessary to confirm assignment, and to obey order of court, .....	590
if he refuses, he may be committed, .....	590
may be examined respecting claims offered for proof, .....	589
liable to punishment if he spends, conceals, or disposes of property after commencement of proceedings, .....	596, 597
examination of, respecting his estate, when and how to be had, .....	589
when confined in jail, .....	589
when sick and unable to attend, .....	589
if out of state when required to do any act, may do or perform same at another time with like effect, .....	590
to take an oath before judge at second meeting; form of oath, .....	590
when may be allowed to take oath subsequently, .....	592
if he dies after issuing warrant, proceedings not to be abated, .....	588
allowance to, for attendance, support, and percentage, .....	594
in case of partnership, .....	597
if not paid in his lifetime, to be paid afterwards to his representatives, .....	594
to have all surplus after debts are paid, .....	594
if by accident he fails to take oath or to file assent to discharge within time allowed, he may do so within a year, .....	592
may appeal to superior court if his discharge is refused, and proceedings thereon, .....	592
if in prison at the time discharge is granted, how released therefrom, .....	591
certain sales by, in contemplation of insolvency, void, .....	594
proceedings against, by creditors, and for what causes may be had, .....	596
Discharge, when and how granted, .....	591, 592
not to be granted unless estate pays fifty per cent., or assent of a majority of creditors in number and value is filed within six months, .....	592
nor in case of second insolvency, unless assent of three fourths in number and value of creditors is filed, .....	592
not to be granted to a debtor a third time insolvent, .....	592
how granted, in case of partnerships, .....	597
when refused solely because debtor, by accident, did not seasonably take oath or obtain and file assent of creditors, may be granted within one year, upon notice to, and with assent of, three fourths in number and value of creditors, .....	592
not to be granted to officers and members of insolvent corporations, .....	599
creditors may assent to, although an appeal has been taken from the allowance of their claim, .....	592
what conveyances, payments, acts, and neglects of debtor will prevent and avoid discharge, .....	593, 594
appeal to superior court from allowance or disallowance of, may be taken by assignee or debtor, .....	592

INSOLVENCY — *continued.*

how taken, notice of given, entered, and proceeded with, .....	592
may be waived, .....	592
form and effect of, in relation to debts, .....	591
upon debtor's subsequently acquired property, .....	591
upon debtor's arrest and imprisonment, and liability thereto, .....	591
does not affect debts contracted for necessities unless proved, .....	592
nor release partner, joint contractor, or other person liable for same debt, .....	592
when set up in defence of actions, provisions respecting costs, .....	74
Dividends to be declared at third meeting, .....	594
order of priority therein, .....	594, 595
in ordering dividends, part of funds may in certain cases be reserved for claims which may afterwards be proved, .....	595
second, to be made within eighteen months, .....	595
further, may be made in certain cases, .....	595
not to be disturbed by subsequent proof of additional claims, .....	595
how declared in case of partnerships, .....	597
to be computed by register, .....	597
notice of, to be given to creditors, .....	597, 598
may be attached by trustee process, .....	722
Examination of debtor touching his estate, how had, .....	596
how, when debtor is in jail, .....	596
sick and unable to attend, .....	596
out of state, .....	596, 597
of persons suspected of having fraudulently received, concealed, embezzled, or conveyed away property, .....	597
Fees and costs of court, .....	610
of messenger, .....	610
how preferred on distribution of estate, .....	611
in cases still pending before commissioners, and masters in chancery, .....	611
Fraudulent preferences and sales, persons receiving, not to vote for, nor be elected, .....	596
assignee, .....	596, 597
not to prove claim on which preference is taken, .....	596
what are such, when void, and when the property and value of, may be recovered back by assignee, .....	593, 594
payment of debts contracted for necessities to extent of twenty-five dollars, not to be considered such, .....	594
when will prevent and avoid discharge, .....	733
certain payments and sales by debtor to be so treated, and may be avoided by assignee, .....	597
Homestead of debtor, how set off, .....	597, 598
Involuntary proceedings, .....	597
for what causes creditors may apply for insolvency proceedings against debtor, .....	597
petitioner to deposit forty dollars, and disposition thereof, .....	597
warrant, how to issue in such cases, .....	597
proceedings may be stayed when debtor has, by accident, failed to dissolve attachment, .....	597
Meetings, how notified by assignee, .....	597, 598, 599
by register, when liable to be defeated by assignee's not notifying, .....	599
may be adjourned by judge, .....	599
register, when judge is absent, or there is no judge, .....	599

**INSOLVENCY — continued.**

<i>First meeting, how called and notified,</i> .....	588
<i>may be adjourned if notice has not been given,</i>	
<i>and further notice ordered,</i> .....	588
<i>warrant to be returned at, and schedules</i>	
<i>filed,</i> .....	588
<i>Second, how appointed, and when to be</i>	
<i>held,</i> .....	590
<i>debtor to take oath, and may amend schedules</i>	
<i>at,</i> .....	590
<i>how called and held, when not held within</i>	
<i>time required,</i> .....	590
<i>Third, how and when to be called and held,</i>	
.....	590, 591
<i>discharge may be granted at,</i> .....	591
<i>how called and held when not held within time</i>	
<i>required,</i> .....	590
<i>accounts to be settled and dividend declared,</i>	
.....	594, 596
<i>subsequent meetings may be had for purpose of</i>	
<i>making dividends,</i> .....	596
<i>Messenger, warrant to be directed to the</i>	
<i>sheriff or one of his deputies as mes-</i>	
<i>senger,</i> .....	582, 588
<i>to give notice of first meeting according to</i>	
<i>orders in warrant,</i> .....	582, 588
<i>to demand and receive debtor's property,</i> .....	588
<i>to be furnished by debtor with a schedule of</i>	
<i>creditors within three days,</i> .....	588
<i>may, by order of judge, sell perishable prop-</i>	
<i>erty,</i> .....	588
<i>to return warrant and schedule of creditors at</i>	
<i>first meeting,</i> .....	588
<i>fees of, and how paid,</i> .....	600
<i>Partners and partnerships, proceedings by and</i>	
<i>against, how commenced,</i> .....	597
<i>may be in county where either partner re-</i>	
<i>sides,</i> .....	597
<i>assignee to be chosen by joint creditors,</i> .....	597
<i>joint and separate property of, to be kept and</i>	
<i>distributed separately,</i> .....	597
<i>provisions respecting limited partnerships,</i> .....	597
<i>separate allowance to be made to each part-</i>	
<i>ner,</i> .....	597
<i>discharges, how granted to each partner,</i> .....	597
<i>in other respects, proceedings to be same as</i>	
<i>against individuals,</i> .....	598
<i>Returns of cases to be made to secretary of com-</i>	
<i>monwealth monthly,</i> .....	600
<i>Set-off of mutual demands, when allowed,</i> .....	584, 587
<i>Security held by creditor, how disposed of,</i> .....	584
<i>Stay of and vacating proceedings, how and</i>	
<i>when proceedings may be stayed and</i>	
<i>vacated,</i> .....	600

**INSOLVENT ESTATES OF PERSONS DECEASED.**

<i>how to be applied,</i> .....	496
<i>debts entitled to preference,</i> .....	496
<i>upon representation of insolvency by execu-</i>	
<i>tor, &amp;c., commissioners to be appoint-</i>	
<i>ed,</i> .....	496
<i>Commissioners to be sworn,</i> .....	496
<i>to appoint times and places for meetings, and</i>	
<i>give notice thereof to creditors,</i> .....	496, 497
<i>six months allowed to creditors to present claims</i>	
<i>to,</i> .....	497
<i>to make return to probate court,</i> .....	497
<i>may examine claimant on oath,</i> .....	498
<i>may administer oaths to witnesses, &amp;c.,</i> .....	498
<i>to keep copartnership and individual claims</i>	
<i>separate,</i> .....	498
<i>provision for contingent debts,</i> .....	497

**INSOLVENT ESTATES OF PERSONS DECEASED — continued.**

<i>appeal, when taken from decision of commissioners,</i>	
<i>where trial to be had, &amp;c.,</i> .....	497
<i>to be taken, and notice given, &amp;c., within thirty</i>	
<i>days of commissioners' return,</i> .....	497
<i>trial to be had but no execution to issue,</i> .....	497
<i>after appeal, claims may be submitted to arbitra-</i>	
<i>tion,</i> .....	498
<i>decision of arbitrators conclusive, when ac-</i>	
<i>cepted by the court,</i> .....	498
<i>party prevailing upon an appeal to have</i>	
<i>costs,</i> .....	498
<i>omitted by accident or other cause than his own</i>	
<i>neglect, remedy for,</i> .....	498
<i>petition for, not to be sustained unless presented</i>	
<i>within two years of commissioners' re-</i>	
<i>turn,</i> .....	498
<i>allowance of, not to disturb prior divi-</i>	
<i>dends,</i> .....	498
<i>distribution among creditors after commissioners'</i>	
<i>return,</i> .....	498
<i>in making dividend, joint and separate estate to be</i>	
<i>kept separate,</i> .....	498
<i>if whole assets are not distributed on first decree,</i>	
<i>further distribution to be made,</i> .....	498
<i>actions by creditors for preferred debts, &amp;c.,</i>	
<i>may be brought against executors,</i>	
<i>&amp;c., after representations of insol-</i>	
<i>venency,</i> .....	498, 499
<i>judgment against an executor, &amp;c., for goods</i>	
<i>attached by deceased officer, to be paid in</i>	
<i>full,</i> .....	648
<i>Creditors of, may appeal from decision of com-</i>	
<i>missioners and try claims at common</i>	
<i>law,</i> .....	497
<i>claims of, on such appeal, to be tried as if on</i>	
<i>action against administrator, &amp;c.,</i> .....	497
<i>within what time appeal shall be claimed, and</i>	
<i>notice thereof how given,</i> .....	497
<i>how such appeal shall be proceeded with in</i>	
<i>court,</i> .....	497
<i>party prevailing entitled to costs,</i> .....	498
<i>remedy for, when appeal is omitted season-</i>	
<i>ably,</i> .....	498
<i>may waive appeal and submit claim to arbitra-</i>	
<i>tion,</i> .....	498
<i>to be paid, if claims allowed on appeal,</i>	
<i>only from assets not before distrib-</i>	
<i>uted,</i> .....	498
<i>provisions for, when debts are contingent,</i>	
<i>&amp;c.,</i> .....	498
<i>after representation of insolvency, cannot main-</i>	
<i>tain action against executors, &amp;c., unless,</i>	
<i>&amp;c.,</i> .....	498, 499
<i>provisions for disposition of actions of, com-</i>	
<i>menced before estate is represented in-</i>	
<i>solvent,</i> .....	499
<i>claims of, to be barred unless presented for</i>	
<i>allowance, &amp;c., according to these pro-</i>	
<i>visions,</i> .....	499
<i>may sue after eighteen months if question of</i>	
<i>insolvency is not determined at that</i>	
<i>time,</i> .....	499
<i>unclaimed dividends to be distributed among,</i>	
<i>after twenty years,</i> .....	499
<i>administration on estates of such creditors</i>	
<i>as are entitled to receive such divi-</i>	
<i>dends,</i> .....	499, 500
<i>if assets are sufficient, debts to be paid in</i>	
<i>full,</i> .....	499
<i>if insufficient, to be paid ratably,</i> .....	499

**INSOLVENT ESTATES OF PERSONS DECEASED — continued.**

administrator, &c., liable only for assets in his hands,.....	499
if surplus remains, to be distributed among heirs,.....	499
Of foreigners, administered upon in this state, how distributed,.....	508
assets not to pay foreign creditors till residents have received just part of debts,.....	508
residue, after paying citizens of this state, how disposed of,.....	508

**INSPECTORS-GENERAL.**

of butter and lard, fish, hops, leather, and pot and pearl ashes, how appointed and term of office,.....	258
to be sworn, &c.,.....	258
may appoint deputies,.....	258

**INSPECTORS OF PRISONS.**

how constituted, and powers and duties of,.....	866, 867
---	----------

**INSPECTORS OF STATE PRISON.**

appointment, duties, &c., of,.....	870, 875
------------------------------------	----------

**INSTITUTIONS FOR SAVINGS.**

provisions respecting,.....	816-819
-----------------------------	---------

(See *Banks and Savings Banks.*)**INSURANCE COMPANIES.****I. INSURANCE COMMISSIONERS.**

Commissioners, appointment of, to hold office for three years, &c.,.....	820
to visit and examine insurance company on request of five or more stockholders or creditors,.....	820
may examine books and agents of foreign companies,.....	820
to examine capital of insurance companies,.....	822
penalty on agent for neglecting to answer,.....	821
to calculate value of outstanding life policies,.....	821
may summon directors, officers, and agents,.....	821
penalty on directors, &c., for refusing to appear and testify,.....	821
if of opinion that a company is insolvent, may apply to supreme judicial court for injunction,.....	821
to furnish forms of returns to companies, and to agents of foreign companies,.....	821
to report violations of law to the secretary,.....	821
to keep a full record of their proceedings,.....	821
to make annual reports to the legislature,.....	821
salary of,.....	821
to submit annually to the legislature a report, in print, of conduct and condition of the several loan fund associations,.....	835
and in case of violation of law, to present the facts to the attorney general, &c.,.....	835

**II. GENERAL PROVISIONS.**

incorporated in this state, general powers of,.....	821
first meeting of, how called,.....	822
to give notice to secretary of state of acceptance of charter within one year from its date,.....	822
matters to be acted upon to be stated in call of meeting,.....	822
may adopt by-laws not repugnant to law,.....	822
power of, to make by-laws as to venue and limitation of actions, restricted,.....	822
secretary and treasurer of, to give bond,.....	822
to have their office in the city or town specified in charter,.....	822
agencies in other places, signs, cards, &c., exhibited by, to specify city or town of company,.....	822

**INSURANCE COMPANIES — continued.**

liable to be taxed,.....	22
directors, when required to furnish legislation or commissioners with statement of affairs,.....	22
such statement to be signed by the president and secretary, and sworn to,.....	22
funds of, how to be invested,.....	22
investing officer of mutual marine, mutual fire, or mutual life insurance, not to borrow in funds, or be liable for money borrowed of company,.....	22
not to buy or sell goods, except those insured by company, &c.,.....	22
to conduct business in corporate name only,.....	22
not to issue policies for a term exceeding seven years,.....	22
in this state, to make annual statement to commissioners,.....	22
annual statement to be sworn to by the president and secretary,.....	22
penalty for neglecting, or making false returns,.....	22
forms of returns,.....	22-24

**III. COMPANIES HAVING SPECIFIC CAPITAL.**

Directors, how chosen,.....	22
to be not less than five, and residents of this state,.....	22
term of office,.....	22
not less than four to constitute a quorum,.....	22
vacancies in office may be filled by, or by a meeting of the stockholders called for the purpose,.....	22
may call special meetings of stockholders,.....	22
president, secretary, and other officers to be chosen by,.....	22
president to be chosen from board of,.....	22
President and other officers, how chosen,.....	22
to be chosen from board of directors,.....	22
and secretary to be sworn annually,.....	22
to preside at all meetings,.....	22
pro tempore, may be chosen,.....	22
to sign policies,.....	22
in absence of, two directors may sign policies,.....	22
Secretary, how chosen,.....	22
to keep a record of votes, a list of the stockholders, &c.,.....	22
to keep a record of all transfers of shares,.....	22
to sign policies,.....	22
in absence of, secretary pro tempore may sign,.....	22
special meetings of stockholders, how called,.....	22
capital stock, unless otherwise specially provided, to be paid in cash, &c.,.....	22
certificates of full shares or policies not to be issued until capital is paid in,.....	22
policies not to be issued until authorized by commissioners,.....	22
capital to be examined by commissioners,.....	22
directors to make oath in relation to money paid in,.....	22
stock, how to be invested,.....	22
restrictions as to loan of,.....	22
not to own more than one fourth of the capital of any one bank,.....	22
not more than one tenth of capital to be loaned on stocks and bonds of one railroad,.....	22
nor more than one fifth on all railroad property,.....	22

**INSURANCE COMPANIES—continued.**

not more than one half to be loaned on mortgages of real estate,.....	324
not more than one tenth on a single mortgage,.....	324
penalty on directors for unlawful investment of,.....	324
companies heretofore chartered not compelled to change investment of,.....	324
may insure vessels, freight, &c., against perils of the sea,.....	324
dwelling-houses and other buildings, and personal property against loss by fire,.....	324
not to take on one risk more than one tenth of amount of capital, &c.,.....	324
liability of directors for so doing,.....	324
policies, how signed,.....	324
risks to be reduced on reduction of capital,.....	324
liability of president and directors for taking risk when losses equal the capital,.....	324
of stockholders for unpaid instalments when losses lessen the capital,.....	324
dividends, how made up,.....	324
annual statement, when and how to be made by directors,.....	324
form of return,.....	322, 323
<b>IV. MUTUAL MARINE AND MUTUAL FIRE AND MARINE COMPANIES.</b>	
agreement to be signed by members,.....	324
who to be members,.....	325
subscriptions to be made, and approved by commissioners, before policies are issued,.....	325
how held, used, invested, and cancelled,.....	325
not to hold on single risk more than one tenth of net funds,.....	324
if risk exceeds one tenth, on open policies, reinsurance to be obtained,.....	325
liability of president and directors for over-insurance,.....	325
mutual marine companies in operation one year to make annual statement, &c.,.....	325
and dividend may be declared on premiums, &c., and certificates issued,.....	324-325
forms of returns,.....	323
Certificates, how transferable, &c.,.....	323
six per cent. interest may be paid on,.....	323
how to be redeemed,.....	323
debt due from persons entitled to, may be deducted therefrom,.....	323
persons entitled to, not answerable except for premium notes,.....	323
Directors, how chosen,.....	324, 323
to be not less than seven, and citizens of this state,.....	324, 323
to be chosen by members,.....	324, 323
members may vote for, by proxy,.....	324, 323
to choose president, secretary, and treasurer,.....	324, 323
not less than five to constitute a quorum,.....	324, 323
may fill vacancies in any office until new election,.....	324, 323
when may call special meetings,.....	324, 323
liability of, for over-insurance,.....	325
to require president to make monthly statement of assets and liabilities,.....	325
such statement to be recorded,.....	325
to call special meetings on written application of the owners of one fifth of capital stock,.....	323
or of twenty stockholders, setting forth the purposes of the meeting,.....	323

**INSURANCE COMPANIES—continued.**

to make oath that money has been paid in by stockholders towards payment of shares,.....	323
in absence of president, two to sign policies,.....	324
liability of, for taking risk contrary to law,.....	324
to make annual statement of dividends,.....	325
President, how chosen,.....	324, 323
to be sworn annually,.....	324, 323
Secretary, how chosen,.....	324, 323
to be sworn annually,.....	324, 323
to keep records of meetings of corporation and directors, and their votes,.....	323
to record all policies and transfers,.....	323
record of, to be open at all times for inspection,.....	323
Treasurer, how chosen,.....	324, 323
to be sworn, &c.,.....	323
oath of officers to be recorded in books of company,.....	323
<b>MUTUAL AND STOCK AND MUTUAL FIRE COMPANIES.</b>	
to elect annually not less than seven directors, citizens of this state,.....	323
after the first election, directors to be members of the company,.....	323
persons insured to be members,.....	323
members not to be allowed more than five votes in person,.....	323
may vote by proxies, dated and executed within six months, and recorded within three days of meeting,.....	323
no person allowed, by proxy or otherwise, to cast more than twenty votes,.....	323
no paid officer to vote as proxy for absent members,.....	323
Members, at expiration of policy, to have share in profits,.....	327
subject to assessment for losses and expenses,.....	327
extent of liability of,.....	327
persons liable to assessment, to be considered members,.....	323
not to be assessed, after two years from expiration, &c., of policy,.....	323
entitled to proportion of profits of class insured in,.....	323
may inspect statement of condition, of company made when assessment is voted,.....	323
Special meetings, directors to call, on request of twenty members,.....	323
may be called by directors when they think proper,.....	327
to be called by directors, on application, &c.,.....	327
Assessments, when and how to be made,.....	327
directors liable for neglect to make,.....	327
liability of members to,.....	327
to be made upon class to which policy belongs,.....	323
record of vote for making, to be kept,.....	323
when ordered, statement of amount to be raised, and losses, &c., to be made,.....	323
statement for each class of property to be made,.....	323
members may inspect and take a copy of such statement,.....	323
persons liable to, to be considered members,.....	323
not to be collected, until statement and record are made,.....	323
President, how chosen,.....	323
to be sworn annually,.....	323
Treasurer, how chosen,.....	323

## INSURANCE COMPANIES—continued:

to be sworn, &c.,	826
neglecting to collect assessment, liability of,	827
may repay himself out of money of the company,	827
Secretary, how chosen, &c.,	828
to be sworn, &c.,	828
to record all policies and transfers,	828
record to be open at all times for inspection,	828
to keep a true list of stockholders, &c.,	827
oath of officers to be recorded in books of company,	828
creditor, remedy of against directors,	827
expenses not applicable to either class of property insured, how to be assessed,	828
Directors, how chosen,	826, 827
to be not less than seven, and citizens of this state,	826
after first meeting, to be members of the company,	826
to choose president, secretary, and treasurer,	826
not less than five to constitute a quorum,	826
majority present to decide questions,	826
may fill vacancies in any office until new election,	826
may call special meetings in certain cases,	826, 827
of a corporation, becoming members, may authorize one or more of its stockholders to represent the same, &c.,	827
to make assessments,	827
when claims exceed the funds, to assess in proportion to premium and deposit,	827
liable for neglect to pay, or assess within thirty days after rendition of judgment against company,	827
one director, paying execution, to have remedy against the rest,	827
may divide property into not exceeding four classes,	828
not to insure, on one risk, a greater amount than they intend to retain, nor with view of re-insuring,	828
not to issue policies on any other than mutual plan, excepting stock and mutual companies,	828
stock and mutual companies to have guarantee capital,	828
guarantee capital, how to be invested,	828, 828
business to be kept separate,	829
returns to commissioners, how to be made,	829, 832, 838
forms of returns,	833, 834
not to insure on one risk exceeding one tenth of capital, &c.,	829
mutual companies, where may insure,	829
certain, not to issue policies before two hundred and fifty thousand dollars is subscribed to be insured,	829
policies and deposit notes to be of the same date,	829
notes not to exceed double the amount of cash premium,	829
trust property may be insured by,	829
trustees not liable in his individual capacity,	829

## LIFE INSURANCE COMPANIES.

not to go into operation until guarantee capital of one hundred thousand dollars is paid in and invested,	829
---	-----

## INSURANCE COMPANIES—continued.

directors, first board of, how chosen,	829
subsequent boards, how chosen,	829
stockholders to be entitled to annual dividends not exceeding seven per cent.,	829
one quarter of estimated surplus fund, &c., to be appropriated for redemption of guarantee stock,	829
residue of surplus fund to be divided once in five years, among the assured, except, &c.,	829
to pay a certain share of profits to Massachusetts Hospital Life Insurance Co.,	830
policies for benefit of certain persons, to whom to insure,	830
if premiums are paid with intent to defraud creditors, an amount equal thereto to insure to the benefit of creditors,	830
securities required by laws of other states may be deposited with state treasurer,	830
company depositing such securities to receive income, &c.,	830
to pay into state treasury one cent on each one thousand dollars insured,	830
not to issue policies on fire or marine risk,	830
form of return,	834

## FOREIGN COMPANIES.

Foreign applies to all companies not incorporated in this commonwealth,	832
stock companies not to insure in this state, unless capital stock amounts to one hundred thousand dollars, &c.,	830
nor unless restricted from taking on one risk amount exceeding one tenth of its unimpaired capital,	830
Mutual companies not to insure in this state, without one hundred thousand dollars cash, &c., and one hundred thousand dollars deposit notes,	830
to satisfy commissioners of amount of funds, &c.,	830
General agent to be appointed in this state, on whom process may be served,	831
copy of appointment to be filed in office of commissioners,	831
agency to be continued while any liability exists in this state,	831
service of process upon, to be deemed service upon principal,	831
general and other agent to give bond,	831
before making insurance, to deposit copy of charter and statement, &c., with the commissioners,	831
to make annual statement to commissioners, and publish the same,	831
Agent to exhibit name of state on sign, and print name, &c., on policies, &c.,	832
not to act until he has complied with requirements of law,	832
penalty on, for acting as, contrary to law,	832
penalty on, for insuring, contrary to law,	832
taxes, penalties, &c., in certain cases,	832
contracts of insurance made by, without complying with the requisitions of law, to be valid, but agents liable, to penalty,	831, 832
neglecting to appoint a general agent, not to recover premiums or assessments,	831
chartered out of United States, to make returns to commissioners as companies in this state,	832
penalty on agent of such companies,	832

## INSURED.

casting away vessel with intent to injure insurer, how punished,.....	804, 806
fitting out vessels with intent, &c.,.....	806
making false invoices to defraud,.....	806
making or procuring false protest to defraud,.....	806

## INTELLIGENCE OFFICES.

license to keep, may be granted by selectmen, &c.,.....	457
fee for license,.....	457
penalty for keeping, &c., without license,.....	457

## INTEREST.

Of money, to be at rate of six per cent a year,.....	292
when more than six per cent. is taken contract not void, but threefold unlawful interest forfeited,.....	292
and defendant to recover full costs in action on such contract,.....	292
if more than six per cent. is paid, threefold unlawful interest may be recovered back,.....	292
action for such recovery to be brought within two years,.....	292
to be allowed on awards, reports, verdicts, and judgments,.....	686
to be collected on warrants and executions for payment of money,.....	686
may be allowed by banks for money deposited by assignees of insolvent debtors,.....	307, 587
In suits, &c., not to disqualify persons from being witnesses in person or by deposition,.....	678
judges, appraisers, &c., from acting, when their towns are interested,.....	618
jurors, by reason of being inhabitants of Boston,.....	618
nor in indictments, &c., for recovery of forfeitures by reason of paying taxes in town interested,.....	688

## INTERLOCUTORY ORDERS.

In civil cases, may be made in term time or vacation in any county, allowing amendments before trial, supplemental answers, &c.,.....	680
court to make rules respecting times and places of motions for, &c.,.....	680
In equity cases, made by a single judge, may be appealed from,.....	560
such appeal to transfer question only, not the case,.....	560
although not appealed from, open to revision on hearing of appeal from final decree,.....	560
affecting merits of controversy, may be reported for consideration of full court,.....	560

## INTERROGATORIES.

to adverse party in a civil suit may be filed for discovery of facts and documents,.....	659
by plaintiff after entry of action,.....	659
by defendant after answer or plea,.....	659
to have annexed thereto affidavit of party or his attorney,.....	659
filing of, not to delay trial except by order of court,.....	661
may, by leave of court, be filed during trial to be answered forthwith,.....	660, 661
may be put to any officer of a corporation which is a party to the suit,.....	659
Answers to be made in ten days, unless the time is extended by court,.....	659
to be in writing, signed and sworn to,.....	659

## INTERROGATORIES — continued.

to be full, and to reply to each interrogatory separately, but may contain matter relevant to issue,.....	659
need not disclose matters which may tend to criminate the party answering,.....	659
need not disclose title to property not material to the issue,.....	659
nor the names of his witnesses,.....	659
irrelevant matter in, to be expunged,.....	659
imperfect, court may order to be made more full,.....	659
costs in such cases,.....	659, 660
if a party refuse to award, expunge, or answer fully, he may, by order of court, be nonsuited or defaulted,.....	660
may state that part of book, voucher, or writing called for is irrelevant, and the same may be sealed up, and not inspected except by order of court,.....	659
may be read as evidence by party interrogating,.....	662
party interrogated may require those upon same subject matter to be read, if any,.....	662
cannot avail himself of his answers nor of the fact that he has been examined, if no part of answers be read,.....	662
Before justices of the peace and police court, how and when to be filed and answered,.....	663
In trustee process,.....	722, 729
INTOXICATING LIQUOR. ( <i>See Liquor.</i> )	
INTRUSION. ( <i>See Information of Intrusion.</i> )	
remedy against parties unlawfully entering, or intruding upon, or holding lands of commonwealth,.....	717-719
or lands held by trustees and others for Indians,.....	719
INVENTORIES.	
Of estates of persons deceased, to be returned by administrator, &c., within three months,.....	488
when need not be returned by executor, who is residuary legatee,.....	488
property comprised in, by whom to be appraised,.....	488, 489
what articles to be omitted from,.....	489
Of estate of wards, to be taken, returned, &c., by guardian, as required by administrators,.....	545
Of trust estates, when required, &c.,.....	500, 501
INVOICES.	
making false, to defraud insured,.....	806
IPSWICH.	
land on beach in, ceded to United States for light-house,.....	45
ISSUE.	
how construed,.....	51
In suits at law, when to be deemed joined,.....	657
of fact, when judgment on, against defendant in plea of abatement, final,.....	658
of law, how raised by demurrer,.....	655
how, by replications, &c.,.....	656, 657
joined in superior court not to be waived in supreme court upon appeal, &c.,.....	668
In criminal cases, how to be tried,.....	840
( <i>See General Issue, Pleading.</i> )	
ISSUING.	
or signing with intent to issue certificates of stock, &c., beyond amount authorized, how punished,.....	801

## J.

**JAILER.**

- to be appointed by sheriff,..... 860
- to continue in office, and retain charge of jails and prisoners, after sheriff's death,..... 861
- after sheriff's death, may be removed, and another appointed, by governor, to remain in office till a sheriff is appointed, ..... 861
- when appointed by governor, shall give bond,..... 861
- exempted from military duty, ..... 98
- not to pay rent for occupation of dwelling-house provided for him by the county, . . . 860
- shall not make contracts for supporting lunatics in county building, without approbation of commissioners, ..... 412
- shall not furnish strong liquors to prisoners,..... 863
- on what conditions shall receive and hold principal surrendered by bail,..... 843, 844, 845
- not required to detain prisoners on civil process who claim support as paupers, unless pay for their support be advanced or secured, . . . . . 688
- when may discharge debtors, &c., if pay, &c., be not advanced, &c., . . . . . 688
- duty of, as to bodies of those who die in prison, .... 861
- shall discharge prisoners when their commitment is superseded by order of magistrate, . . . . . 884
- to keep calendar of prisoners,..... 860
- penalty for not
- to present list of
- final
- punishment of, if
- lawful
- for voluntarily
- for negligently
- may discharge
- from
- paid, .
- complainant to
- fee of, in the
- duties of, respect
- when,
- he give
- fee of, in such

**JAILS.**

- to be provided
- except
- in Suffolk, at
- to be erected
- stoner
- tucket
- in Nantucket
- in Suffolk, by
- to be under charge
- their
- officers of, exempt
- when to be used
- house
- shall be used for
- of persons charged
- trial, .
- committed
- committed
- committed, in
- States.

**JAILS—continued.**

- under sentence,..... 87
- prisoners in, may be furnished with employment,..... 88
- but shall not be required to labor,..... 88
- with infectious diseases, may be removed to hospital, &c., by order of board of health, ..... 89
- report of removal to be made to court ordering commitment, . . . . . 89
- such removal not an escape,..... 89
- paupers discharged from, to be removed to state almshouses, in certain cases,..... 401, 402
- if convict is too sick to be removed, how provided for,..... 402
- regulations of, as to prisoners sentenced to solitary imprisonment and hard labor, . . . . . 882
- when more than one in same county, sheriff may remove prisoners from one to another, for what purposes, . . . . . 882
- particular provisions for keeping in clean and healthful condition,..... 881, 882
- how to be visited and examined by inspection of, . . . . . 882
- wilful injury to, or to furniture, &c., by prisoners, how punished, and what damages recoverable for, . . . . . 882, 883
- if prisoner escape by reason of insufficiency of, county must reimburse the sheriff, . . . . . 883



**JOINT TENANTS — continued.**

liability of, for committing waste without notice to other co-tenants,.....	709
for committing waste during pendency of proceedings for partition,.....	709
may sue separately, or all or any two may join in a writ of entry to recover lands,.....	692
actions against, when part are out of state, how conducted and judgment rendered,.....	647

**JOINTURE.**

in order to bar dower, to consist of freehold estate for wife's life,.....	470
and to take effect immediately on death of husband,.....	470
wife's assent to, how to be expressed,.....	470
when may be waived and dower claimed,.....	470
upon eviction from lands so held, widow may be endowed anew,.....	470

**JOURNALS.**

of senate and house of representatives, indexes and duplicate journals to be made by clerks,.....	48
files, papers, &c., to be in custody of the respective clerks,.....	49
certified copies to be evidence,.....	49

**JUDGES.**

of courts of record, exempted from military duty,.....	98
of the supreme judicial court, to hold office during good behavior, and have salaries established by standing laws,.....	17, 25
not to exercise legislative and executive powers,.....	17
to be appointed by governor with advice of council,.....	24
tenure of office of,.....	27
may be removed by governor and council, upon address of legislature,.....	27
not to be counsel or attorney, in cases previously determined by them,.....	615, 616
judges and commissioners of the United States not to hold judicial office in this state except justice of the peace,.....	742
not disqualified from acting by reason of being an inhabitant of any city or town interested,.....	618
what, exempt from serving as jurors,.....	679
(See <i>Supreme Judicial Court, Superior Court, Probate Courts, Courts of Insolvency, Police Courts, Judges of Probate and Insolvency.</i> )	

**JUDGES OF PROBATE AND INSOLVENCY.**

one in each county, how appointed, and tenure of office,.....	24, 27, 601
to take oaths prescribed by constitution,.....	23, 33, 601
additional oaths to be filed in probate office,....	601
may interchange services or perform each other's duties,.....	602
when a judge is absent, interested, or unable to perform his duties, or there is a vacancy, register to procure attendance of some other judge,.....	602
record, how to be made, and business, how to be done in such case,.....	602
not to be retained or employed as counsel in certain cases,.....	602
not to hold certain other offices,.....	30, 33
exempted from military duty,.....	98
from serving as jurors,....	679
to be judges of the probate courts,.....	574

**JUDGES OF PROBATE, &c. — continued.**

to be judges of courts of insolvency,.....	581
may, when justice, of the peace, with another justice, take depositions to perpetuate testimony,.....	676
Salaries of,.....	608
not to receive fees or compensation for attending courts in other counties, nor for any other official service, except in cases expressly provided for,.....	604
(See <i>Probate Courts, Insolvency.</i> )	

**JUDGMENT.****IN CIVIL ACTIONS.**

to be entered as of last day of term, unless otherwise expressly ordered by court,.....	685
may, by order of court, be entered in four days after default,.....	685
day of entry be noted by clerk, when made before end of term,.....	685
in actions continued nisi in supreme court, and determined before next term, may be entered as of the last term,.....	567
clerk to note on docket time of receiving order for such entry,.....	567
when so entered for plaintiff, security by bail or otherwise to be held from that time,....	567
may, in any case, in discretion of court, be entered as of any day of former term,.....	567
may be entered as of term when verdict was rendered, when a motion for new trial is overruled,.....	685
how entered in actions in which defendant files demands in set-off,.....	671
against such of several defendants as are defaulted, or found liable in action of contract,.....	685
for costs in such cases when part are found liable and part are defaulted,.....	685
in actions for breach of bonds, contracts, and agreements with penalties,.....	685, 686
on forfeited recognisances in criminal cases,....	835
against absent defendant,.....	605, 646
such as are served with process when there are several defendants,.....	647
executors and administrators who prosecute or defend,.....	648, 651, 652
estate of deceased, when executors or administrators do not appear,.....	648
not to be rendered after exceptions are taken unless they are adjudged frivolous,.....	567
may be awarded on default, by court, or on motion of either party amount may be assessed by jury,.....	685
on damages assessed by jury or clerk in certain cases,.....	685
to include interest on awards, verdicts, &c.,.....	685
for payment of money to bear interest,.....	685
when rendered in a local action, in a wrong venue, how executed,.....	686
arrest of, not to be for any cause existing before verdict, unless it affects jurisdiction of court,.....	662
defects of form in record may be amended after judgment,.....	653
unsatisfied, after time for taking out execution, creditor may have <i>scire facias</i> , or action of contract thereon,.....	686
after discharge, in certain cases, of poor debtor committed thereon, to remain in force,.....	637, 638
obtained by default, if an action is brought thereon within six years, defendant	

**JUDGME**

in wri

for red  
is true  
in fav

when

of con  
pe

where

how en  
other

**JUGGLE**

how to  
**JULY F**  
legislat

courts

bills of

**JUNK.**

provid  
**JURISDI**  
of the

su

of con

of con

not a

of off

of off

where

where

in capi  
of M

**JURORS.**

who li  
not n

ed

## JURORS—continued.

ballots, and placed in a box, to be kept by town clerk,.....	680
names of persons convicted of scandalous crimes, or guilty of gross immorality, to be withdrawn from box,.....	680
upon every renewal, the indorsements of the drafts of all persons returned within three years, to be transferred to the new ballots,.....	681
penalty on city and town officers for fraud in relation to,.....	684
In cities, list to be prepared and posted by mayor and aldermen, and submitted to common council,.....	682
common council may revise list in like manner as towns,.....	682

## VENIRES.

venires for jurors to be issued by clerks of the courts, before each term, except certain terms of superior court, for criminal business, in Suffolk,.....	680
to be issued at such other times, and served and returned as the courts order,.....	680, 681
to be so issued as to require such numbers from different towns as to equalize duty of serving,.....	681
to be delivered to sheriff, and by him transmitted to constables, who shall serve same without delay on selectmen and town clerk,.....	681
how served in cities,.....	682
irregularities in, not to affect verdicts in certain cases,.....	683
may be issued by order of superior court, in term time or vacation, to procure attendance of jurors in Dukes county from any town in the county, to serve in cases in which any towns are interested,.....	681

## DRAWING AND SUMMONING.

to be selected, when required in any case, (except upon inquests, and proceedings for the commitment of insane persons,) by drawing ballots from the jury box,.....	681
when to be drawn, town clerk and selectmen to attend at clerk's office, and how drawing shall be conducted,.....	681
name of any person drawn, who is exempt, or unable to attend, by reason of sickness or absence, or who has served within three years, to be returned to box,.....	681
date of the draft of persons returned to be indorsed on ballots,.....	681
may be drawn in open town meeting, if town so votes,.....	681
if town has so voted, selectmen to call town meeting when a venire is served upon them,.....	681
all meetings for drawing jurors shall be not less than seven, nor more than twenty-one days before they are required to attend,.....	681, 682
to be summoned by constable, how,.....	682
how drawn in cities,.....	682
how returned from the bystanders, or the county at large, when panel is reduced by challenge or otherwise,.....	682

## JURORS—continued.

irregularities not to affect verdicts in certain cases,.....	683
penalty on city and town officers for fraud in relation to,.....	684

## EMANELLING.

clerk of court to prepare alphabetical list of jurors returned,.....	682
first twelve on list to be sworn and empanelled as first jury,.....	682
second twelve to be sworn and empanelled as second jury,.....	682
supernumeraries may be placed on either jury when others are absent,.....	682
may be transferred from one jury to the other as convenience requires,.....	682
after being empanelled, to elect foreman by ballot,.....	682
new foreman to be chosen in like manner, when former is absent,.....	682
above provisions not to apply to juries in criminal cases,.....	682

## IN CRIMINAL CASES.

Grand jurors, how drawn, summoned, and empanelled, &c.,.....	837, 838
(See <i>Grand Jurors</i> .)	
Trial jurors to be called, sworn, and empanelled anew for trial of each case,.....	682
foreman shall be appointed by court or by jury, when they retire to consider of their verdict,.....	682
irregularities not to affect verdict, in certain cases,.....	683
list of, to be given to persons indicted for crime punishable by death, or state prison for life,.....	839
provisions as to challenging,.....	841
what opinions disqualify for trying capital cases,.....	841
form of oath of,.....	841
what jurors may affirm,.....	841
may decide the law and the fact,.....	842
(See <i>General Provisions</i> , above.)	

## CORONER'S INQUEST.

duty of, while serving on inquest,.....	849, 850
penalty, when summoned on coroner's inquest, for not attending,.....	848
not required to serve oftener than once in twelve months,.....	848

## BEFORE JUSTICES OF THE PEACE.

how drawn, summoned, &c.,.....	606, 680, 681
--------------------------------	---------------

## JURY.

right of trial by,.....	15, 16, 538
in criminal cases, may decide the law and the fact,.....	842
courts shall not charge as to matters of fact,.....	506
when, after deliberation; they return into court without agreeing, they may be instructed, and sent out again,.....	683
shall not be so sent out more than once without their consent, unless they ask explanation of law,.....	683
may be taken to view premises in certain cases, and on what terms,.....	683
may, by order of court, assess damages upon default,.....	685
to revise proceedings of county commissioners in • laying out, &c., highways, when may be had,.....	236

**JURY—contd**

powers

warrant

how an

penalty

if not i

to be s

to view

(

verdict

may

if acc

to determin

(

to determin

(

in case of b

in case of

(

to assess da

(

to try ques

(

in complain

in proceedi

(

or court

trial by, in

(

in such

(

(

in case

summoning

(

**JUSTICES**

(

RUM.

may discha

(

may approv

**JUSTICES OF**

(

how appoin

tenure of of

exempt fro

may issue

(

(

(

may grant

(

(

may admin

punish

(

(

must keep

(

may adjour

not to cor

(

(

not to iss

(

(

shall not

(

(

may issue

when com

(

(

## JUSTICES OF PEACE—continued.

in actions before, how interrogatories by parties to suits to be filed and answered,.....	668
jurisdiction and proceedings in trustee process, and scire facias on judgments thereon,.....	729, 730
may issue writs of scire facias against executors and administrators, on suggestion of waste,.....	606
against bail taken in actions before them, although judgment exceeds their general jurisdiction,.....	606, 644
writs, in such cases, how served and returnable,.....	606
judgment may be rendered, and execution issued, although whole sum exceeds one hundred dollars,.....	606
writs in actions commenced before, forms of, how signed and issued, and to be served and returned in same county,.....	606
may run into any county for purpose of attaching property, but cost of service limited to one dollar fifty cents,.....	606
* how served, and notice of action given, when defendant is out of state, and proceedings in such case,.....	606
not to be returnable earlier than 9 A. M., nor later than 5 P. M., and may be returnable at dwelling-house,.....	606
attachment of lands not to be made on, unless damages demanded exceed twenty dollars,.....	624
execution issued by, for damages exceeding twenty dollars, to be so framed as to direct a levy on lands of debtor,.....	686
action before, may be heard at dwelling-houses,....	606
may be removed to superior court when title to real estate is brought in question,.....	606, 781
actions of replevin may be removed when penalty or damages demanded exceed one hundred dollars,.....	681
party requesting removal to recognize; and if he fails so to do, justice to hear case,.....	606
party recognizing, to enter action and produce papers; and if he fails so to do, adverse party may, on complaint, have judgment,.....	606
when absent at time and place to which any process is returnable, any other justice may attend and continue case, not exceeding thirty days,.....	606
may enter judgment and award execution for plaintiff, upon default or trial,.....	606, 608
for costs for defendant, if plaintiff fails to enter action or to maintain it,.....	606
trials before, may be had either on written pleas, or defendant may orally deny plaintiff's right to maintain action, and trial be had upon such denial,.....	606
trials may be had before jury, if all parties file a written waiver of right of appeal; and in such case, no appeal shall be had,.....	606
six jurors to be summoned in such cases; how drawn, summoned, sworn, and empanelled, and proceedings thereupon,.....	606, 680
when sufficient number of jurors cannot be obtained, justice to cause jurors to be returned from bystanders,.....	607
how long required to serve, &c.,.....	680, 681
sheriff or constable to attend on such juries,....	606

## JUSTICES OF PEACE—continued.

fees of officers and expenses of room, in such cases, to be paid by county,.....	607
costs for attendance before,.....	788
to enter on docket day when case is disposed of for the term,.....	788
Death of justice, while actions before remain unfinished, proceedings thereupon,.....	607
any other justice may transcribe records, certify copies, and issue judgment,.....	607
may summon executor or administrator to produce records,.....	607
Set-off of mutual demands in action before, how made,.....	671
Appeal from decisions of, may be had, to superior court, within twenty-four hours after entry of judgment, by any party aggrieved,.....	607
appellant to recognize, with sureties, to prosecute appeal,.....	607
enter appeal, and produce copies and papers; and failing so to do, adverse party may, on complaint, have judgment affirmed in superior court,.....	607
pleadings and trial in superior court on such appeal,.....	607
costs on appeal,.....	780
appeal or complaint for non-entry thereof, if not seasonably entered, may, on leave of superior court within one year, be subsequently entered,.....	568
effect of such subsequent entry on bail and security taken in action,.....	568

## CRIMINAL JURISDICTION.

all justices to be conservators of peace, and may issue warrants returnable before police courts or trial justices,.....	570, 608, 827, 831
to receive no fees therefor,.....	570, 608
may arrest offender without warrant, in certain cases,.....	608, 828
not to have other jurisdiction in criminal cases, unless designated as trial justices,.....	608
may issue search warrant for liquor kept for unlawful sale, &c.,.....	445
may issue search warrant for gunpowder, &c., unlawfully kept, &c.,.....	461
duty of, in suppressing riotous and unlawful assemblies,.....	815
penalty for neglect of such duty,.....	815
Trial justices, to continue such according to the tenor of their commissions,.....	608
number to be appointed in the several counties,.....	608
authority of, ceases on change of domicile,.....	608
may discharge poor debtors arrested on mesne process or execution,.....	636
approve bail bonds,.....	642
to have jurisdiction of offences punishable by fine not exceeding fifty dollars, or imprisonment not exceeding six months, or both,.....	608
may punish for assaults and batteries, &c., and cause rioters and disturbers of the peace, and other disorderly persons, to be arrested,.....	608
persons arrested, in such cases, to be tried, required to find sureties, and bound over to superior court for trial,.....	608
may also punish for breaches of town by-laws, violations of liquor law, illegally keeping billiard tables and bowling	

10

JUL

KE

KU

KU

LAI

LAI

LAI

LAI

LAI

LAI

LAI

**LARCENY—continued.**

of beasts and birds not subject of larceny at common law, .....	799
property stolen to be kept and restored to owner after conviction, .....	799
after conviction for, court may order meet recompense to prosecutor, .....	799
so when offender has forfeited his recognizance, or escaped, .....	799
what is deemed, and how punished, .....	798, 799
may be accessory to, before and after the fact, .....	798
jurisdiction of such cases, .....	799
of whose property it may be, .....	799
of those who may maintain an action of tort, but not of those having only the use or custody, .....	799
of wife in possession, .....	799
of property of person deceased, .....	799
from person unknown, .....	799
may be committed by those having the use or custody of property, .....	799
but not by those against whom an action of tort would not lie for such acts, .....	799
jurisdiction concerning, given to justices of the peace and police courts, .....	570, 609

**LARD. (See Butter and Lard.)**

provisions respecting inspection and sale of, .....	258-260
---	---------

**LAWS.**

enacting style of, .....	81
construction of, .....	50
words and phrases in, to be construed according to common usage, unless technical, .....	51
words in singular number may be applied to plural, and vice versa, .....	51
words in masculine gender may be applied to feminine, .....	51
words giving joint authority to more than two, shall apply to majority, .....	51
construction of various words, .....	51, 52
acts of incorporation to be deemed public acts, .....	50
execution of, those hindering, how punished, .....	814
list of laws repealed after passage of Revised Statutes, and before passage of General Statutes, .....	907, 908
Of foreign countries, how proved, .....	678, 679
of other states, and the United States, how proved, .....	678, 679

**AND RESOLVES.**

to be bound, each year, in separate volumes, .....	49
how promulgated, .....	50
to be published by secretary at close of each session of legislature, .....	49, 50
how distributed, .....	50
when to take effect, .....	50
certain general, to be published by secretary in pamphlet form, and sent to town clerks for distribution, .....	50
to be published in newspaper, .....	50

**LEASE.**

for more than one hundred years, while fifty are unexpired, to have incidents of freehold, .....	471
for more than seven years, to be recorded, .....	466
written, terminated on non-payment of rent, by fourteen days' notice to quit, .....	472, 707
at will, how terminated, .....	472
terminated by tenant's using premises for certain unlawful purposes, .....	454
not to prevent partition of real estate, or invalidate any partition heretofore made, .....	705

**LEASE—continued.**

when terminated by notice to quit for non-payment of rent, how lessor may be restored to possession of premises, .....	707
after such notice, and four days before entry of action for possession, lessee may pay or tender rent and costs, and be restored to his rights, .....	707
how lessor may be restored to possession when lessee, &c., holds unlawfully or without right, .....	707
(See Forcible Entry and Detainer.)	
estates held by, how attached, .....	626
how levied on to satisfy executions for debt, .....	690

**LEATHER.**

inspector-general of, how appointed and term of office, .....	258
to be sworn, .....	258
to give bond, .....	259
may appoint deputies, who shall give bond, .....	258, 259
fees of, .....	259
and make returns once in six months, .....	258
inspectors to furnish themselves with scales, weights, and seals, .....	259
to inspect leather within place for which appointed, .....	259
deputy may inspect in another place, when no inspector therein, .....	259
fees of, .....	259
liability of, if weight varies five per cent. from amount marked, .....	259, 270
Sole and belt, how to be inspected, weighed, and stamped, .....	259
made of hides of neat cattle, not to be sold until inspected, .....	259
penalty for buying or selling, without inspection, .....	259
penalty for counterfeiting, &c., inspectors' marks on a side of, .....	259
Upper, measurers of, to be appointed by selectmen, &c., annually, .....	270
to be sworn, .....	270
to furnish themselves with measures and seals, .....	270
duties and fees of, .....	270
penalty for counterfeiting marks of measurer, .....	270
manufacturers of leather, boots, &c., to have right to stamp articles manufactured by them, .....	270
such stamp to be considered as warranty, .....	270
articles not considered merchantable unless so stamped, .....	270
penalty for fraudulently using stamp or name of another person, .....	270

**LEGACIES.**

when not to lapse by death of legatee before that of testator, if issue survive, .....	479
such issue to take, unless, &c., .....	479
to a subscribing witness to a will, void, unless there are three other competent witnesses, .....	477
may be recovered by action at law, and time of action not limited, .....	498
may be attached and held by trustee process, .....	728
when and how liable to contribution for payment of debts of testator, .....	479

**LEGATEES.**

to contribute when estate is taken from a devisee, &c., to pay testator's debts, or for dower, &c., of widow, .....	479, 480
---	----------

LEAG

h

h

h

w

h

e

h

h

n

LEGH

n

t

h

LESS

e

LEW

s

e

LEW

t

h

LEW

e

LEV

e

e

LIBI

e

j

f

e

t

e

l

j

LIBI

l

LIBI

l

LIBI

e

t



## LICENSE—continued.

applications for, how made, .....	456
not to be granted or renewed without certificate from selectmen, .....	456
form of such certificate, .....	456
proceedings, if selectmen refuse certificate, .....	456
when may be revoked, .....	456
no fee to be required for, .....	457
To keepers of intelligence offices, may be granted by mayor and aldermen and selectmen, .....	457
penalty on persons keeping such office without, .....	457
fee for, .....	457
To auctioneers, may be granted by selectmen, .....	280
other provisions respecting, .....	281
To hawkers and pedlars, may be granted by the secretary of the commonwealth, .....	282
other provisions respecting, .....	282, 283
To dealers in junk and second-hand articles, may be granted by mayor and aldermen and selectmen, .....	457, 458
to designate place of business, prescribe restrictions, &c., .....	458
penalty on persons dealing in such articles without, or contrary to provisions of, ....	458
To pawnbrokers, may be granted by mayor and aldermen and selectmen, .....	458
to designate place of business, and prescribe restrictions, &c., .....	458
penalty for carrying on business of, without, or violating provisions of, &c., .....	458
Of livery stables, in maritime places, may be granted by mayor and aldermen, &c., ....	458
penalty for keeping or using stable without, ....	458
For use of steam engines, furnaces, &c., in certain places, granted by mayor and aldermen, .....	458, 459
notice of application for, how given, .....	459
For selling, &c., fireworks, may be granted by mayor and aldermen, &c., .....	460
penalties for violations of, .....	460
Of dogs, term of, and fees for, .....	461
to be issued by town clerk, .....	461
when may be given, .....	461
new, not required upon removal, unless, &c., ..	461
penalty for keeping dog without, .....	461
towns, &c., may make additional regulations concerning, and fix fees, .....	463
For theatrical exhibitions, public shows, &c., may be granted by selectmen, .....	463
penalty for setting up, without license, ....	463, 464
for getting up masked balls, .....	464
for exhibiting fighting birds, &c., .....	464
For billiard tables, and bowling alleys, may be granted for amusement only, by mayor and aldermen, &c., .....	463
penalty for keeping billiard tables, &c., without, .....	463
To sell real estate, for payment of debts, &c., by executors, .....	510, 512
of ward, by guardian, .....	545

## LIENS.

## ON LANDS AND BUILDINGS.

who may have lien for labor done and materials furnished, .....	762
nature of the contract to give a lien, .....	762
lien not to attach for materials furnished, unless owner of property is notified, .....	762
not to be of force against existing mortgage duly recorded, .....	762

## LIENS—continued.

not to attach, when owner gives written notice that he will not be responsible, .....	762
to be dissolved, unless statement of account is filed in city or town clerk's office, .....	762
what the statement must contain, and when to be filed, .....	762
what inaccuracy in the statement not to invalidate proceedings, .....	762
shall be dissolved, unless suit be brought to enforce it, in ninety days, .....	762, 763
may be enforced by petition to superior court for a decree for sale of premises, .....	763
when claim does not exceed one hundred dollars, petition may be to justice of the peace or police court, .....	763
parties may appeal therefrom, as in other civil cases, .....	763
petition may be inserted in a writ of original summons, .....	763
how served, returned, &c., .....	763
any number who have labored on same building, &c., may join in petition, .....	763
rights of each petitioner, and of the superior court, .....	763
statements and prayer of such petition, .....	763
either party may amend pleadings, .....	763
such petition to be indorsed like an original writ, .....	766
what notice, and to whom, shall be ordered by court, before acting on the petition, .....	763
all creditors, having such lien, may appear and prove their claims, and contest the claims of each other, .....	763
claims of all such creditors, who appear, to be determined by court with or without a jury, .....	763
material questions of fact to be decided by a jury, if either party require it, .....	764
before justice of peace, or police court, a jury shall be had only as in other civil cases, .....	764
provision for allowance of claims due absolutely, but not then payable, .....	764
of claims for part performance only, when claimant is not in fault, .....	764
sale of premises to be ordered, if lien of any creditor, who presents his claim, is established, .....	764
of part of premises, when may be ordered, ....	764
notice of sale by officer, and debtor's right to redeem, .....	764
court, on ordering sale, may direct officer how to distribute proceeds, if claims are all ascertained, .....	764
may order officer to bring proceeds into court, if claims are not all ascertained when sale is ordered, .....	764
how court may order distribution, according to circumstances, .....	764
surplus proceeds of sale to be paid to debtor; liable, however, to attachment, &c., .....	764
if premises are attached, when mechanic's statement is recorded, what proportion of proceeds of sale shall be reserved for attaching creditor, .....	764, 765
to be ascertained by a jury or otherwise, .....	764, 765
on such creditor's recovering judgment, reserved proceeds to be applied to discharge thereof, .....	765
if premises are attached after statement is recorded, surplus proceeds of sale to be	

## LIENS—continued.

applied as in case of successive attachments, &c.,	765
where an attachment intervenes between two liens,	765
different attaching creditors, and persons having liens, to be paid successively, according to date of their respective liens,	765
several persons, who have liens and equal rights, to be paid ratably, if proceeds are insufficient to pay the whole,	765
if debtor have a life estate only, or is mortgagor, &c., when lien attaches, lien to bind his interest,	765
if debtor die, or aliene the premises, suit may be brought, or prosecuted, against his heirs or assigns,	765
if creditor die, his administrator, &c., may sue, or prosecute suit already commenced,	765
if creditor petition for sale prematurely, or become nonsuit, other creditors, having a lien, may proceed with the suit,	765, 766
claim of such creditor may be allowed, on terms as to costs, if the suit be pursued by others,	765, 766
foregoing provisions not to take away creditors' common law rights,	766
appeal to supreme court allowed from any final judgment, &c., of superior court,	766
costs to be subject to discretion of court, and paid from proceeds of sale,	766
when debt is fully paid, creditor, at debtor's expense, to discharge lien in the registry, or execute a release thereof,	766

## ON SHIPS AND VESSELS.

who to have, for what, and by virtue of what contract,	768
to be preferred to all liens, except mariners' wages,	768
to continue until the debt is satisfied,	768
to be dissolved, unless sworn statement filed,	768
within what time to be filed,	768
what the statement is to contain, and where to be	768

## LIENS—continued.

paid in sixty days after a written demand therefor,	76
in what county petition to be brought,	79
justice to issue notice; service and return,	75
proceedings, where owner is unknown or resides out of the state,	76
when the justice or court may order sale,	79
proceeds of sale, how disposed of,	79, 79
surplus to be paid to owner on demand,	79
amount due to be ascertained and recorded,	79
either party may appeal,	79
if respondent appeals, he shall recognize,	79
condition of recognizance,	79
prevailing party to recover costs,	79
rights of persons, having lien, to dispose of property otherwise, not hereby affected,	79
Boarding-house keepers to have lien on baggage and effects of boarders or guests for board,	79
baggage of mariners excepted,	79
how lien may be enforced,	79
Of attorney, on client's execution, &c.,	615
Attachment of property held by, how made,	617, 619

## ON REAL ESTATE IN OTHER CASES.

on land, for taxes assessed thereon,	63
of testator, for payment of his debts, not discharged by bond of executor to pay debts and legacies,	451
damages awarded by jury against a mill owner for flowage, to be on mill and mill-dam,	736
to what sums to extend,	736, 737
premises may be sold on execution,	737
of demandant, in action to recover an estate for life, for money paid tenant for improvements,	686, 686
Not defeated by homestead estate,	655

## LIEUTENANT-GOVERNOR.

title of,	5
to be chosen annually,	25, 24, 25, 42
qualifications of,	2

inspectors to be sworn,.....	270
to inspect lime manufactured in such place, when filled at the kiln, &c.,.....	270
fees of,.....	270
casks of, how branded,.....	270
quality of, and of casks,.....	270
Maine, description of casks for,.....	270, 271
penalty for selling, in casks, contrary to law,.....	271
to be forfeited, if sold or shipped contrary to these provisions,.....	271
penalty for shifting contents of casks after being branded,.....	271

**LIMITATION OF PERSONAL ACTIONS.**

**ONE YEAR.**

actions by creditor against executor or administrator after notice of assets coming to executor, &c., after two years,.....	491
against executor or administrator, for same cause of action, after the determination of the original suit by abatement, &c.,.....	491
against executor or administrator by creditor whose right of action does not accrue within two years after the notice of their appointment,.....	492
by creditors against heirs, next of kin, devisees, or legatees,.....	507
actions for penalties or forfeitures given wholly or in part to the plaintiff,.....	779
on replevin bonds,.....	788
on bond given by debtor, whose goods are at- tached, to pay appraised value,.....	680
of writs of review, on judgments against absent defendants in certain cases,.....	646
for fines and costs by commonwealth against guardians of poor convicts dis- charged,.....	879
scire facias against bail,.....	648
action on recognizances and bonds for poor debtors,.....	641

**TWO YEARS.**

actions for recovery of unlawful interest paid,.....	292
for recovery of expense of support of paupers, &c.,.....	868
for assault and battery, and for false imprison- ment,.....	777
for libel and for slander,.....	777
by or against executors or administrators, where the deceased died before the time limited, or within thirty days after,.....	778
against executors and administrators, after giving notice of their appointment by creditors,.....	494, 491
against public administrator under general bond, from date of letters of adminis- tration,.....	487
and after assets come to their hands,.....	491
against new administrator after his giving bond, unless, &c.,.....	492
against a master for breach of the indenture of apprenticeship,.....	561
by the commonwealth for penalties and for- feitures,.....	779
for the support of paupers and prisoners,.....	868
for taking illegal fees,.....	814
for making, &c., false certificate of wit- nesses,.....	814

**THREE YEARS.**

applications for damages caused to lands, &c., by the acts of an aqueduct corporation,.....	876
scire facias against trustee after judgment,.....	726

**FOUR YEARS.**

actions against sheriffs for the default of their depu- ties,.....	777
against sureties on guardians' bonds,.....	546

**SIX YEARS.**

actions of contract on any contract or liability not under seal,.....	777
except on judgment of court of record in the United States,.....	777
for arrears of rent, except in cases under seal,...	777
of replevin, and for taking, detaining, or injur- ing goods and chattels,.....	777
all actions of tort, except certain specified ones,.....	777
against the last shareholders of an aqueduct cor- poration after its dissolution,.....	875
writs of certiorari,.....	748
writs of error on judgments in civil actions, ex- cept, &c.,.....	745
actions on causes of action that have been fraudulently concealed,.....	778

**TWENTY YEARS.**

personal actions on contracts not limited by fore- going provisions, &c.,.....	778
actions on bills, notes, &c., issued by banks,.....	777
by original payee (or by executor, &c.) of wit- nessed promissory notes,.....	777

**EXCEPTIONS.**

minors, married women, persons absent from the United States, insane or imprisoned, may sue within the times limited after the dis- ability is removed,.....	778
time of war not included in the computation, in case of certain alien plaintiffs,.....	778
time of defendant's absence from the state not to be included,.....	778
two years to be allowed on death of either party be- fore, or within thirty days after, expira- tion of limited time,.....	778
one year to be allowed after failure of former suit, or reversal of judgment therein, for same cause,.....	491, 778
fraudulent concealment of cause of action not to prevent suit within six years after its dis- covery,.....	778
action by legatees not limited,.....	493

**PART PAYMENT, NEW PROMISE, INDORSEMENT, AC-  
KNOWLEDGMENT.**

effect of payment of principal or interest, not altered,....	779
acknowledgment or promise, if in writing and signed by party chargeable, prevents the limita- tion operating,.....	778
indorsement of payment on note by payee not suf- ficient,.....	779
promise, &c., by one of several joint debtors, to affect himself only,.....	779
or by one of several joint executors, &c.,.....	779

**GENERAL PROVISIONS.**

limitation of demands filed in set-off,.....	671, 779
--	----------



**LIQUORS, &c. — continued.**

to appoint agents to sell liquors in Boston,.....	439
successor in office to purchase stock of,.....	439
value of stock of, how determined in case of disagreement,.....	439

**2. AUTHORITY TO MANUFACTURE AND SELL FOR EXPORTATION, &c.**

Manufacturers of, how authorized to make and sell,.....	439
to receive certificates of authority, and to give bond,.....	439
form of such bond,.....	439, 440
bond of, to be put in suit for breach thereof, and certificate forfeited,.....	440
to keep book, open to inspection of board authorizing manufacture, &c.,.....	440
to record sales in such book, &c.,.....	440
record of names, residences, &c., of, and of town agents, &c., to be kept by clerks of boards authorizing, &c.,.....	440
such record to be open to public inspection,....	440

**3. CITY AND TOWN AGENTS.**

Agents for selling, to be appointed annually, in every city and town by selectmen, &c.,	440
to sell for medicinal, mechanical, &c., purposes only,.....	440
to receive fixed salaries,.....	440
penalty on selectmen, &c., for not appointing,...	440
to receive certificate authorizing to purchase and sell, &c.,.....	440
to give bonds,.....	441
form of bonds,.....	441
bond to be put in suit for breach thereof, and appointment revoked,.....	441
record of appointment of, to be kept by town clerks,.....	441
to keep account of purchases of liquors, &c., and of forfeited liquors delivered to them,.....	441
to keep record of all sales; form of such record,.....	441
to purchase only of commissioners, under penalty,.....	441
may be restrained by supreme judicial court from purchasing contrary to law,.....	441
to make returns of purchases annually, to secretary of commonwealth,.....	441, 442
penalty on, for neglect to make returns,.....	442
for making false statements to,.....	442

**4. SALES, &c., SPECIALLY AUTHORIZED.**

foreign liquors, imported under laws of United States, may be sold by importer in the original packages,...	442
pure alcohol may be sold by druggists to physicians, &c., for medicinal purposes,.....	442
druggists to keep record of such sales, open to inspection of selectmen, &c.,.....	442
penalty on, for illegal sales,.....	442
chemists, &c., may keep spirituous liquors for use in their art or trade,.....	442
cider may be manufactured and sold for other purposes than a beverage,.....	442
wine, unadulterated, may be sold for sacramental purposes,.....	442

**5. UNLAWFUL SALES, &c.; REMEDIES, PUNISHMENTS, &c.**

manufacture and sale of intoxicating liquors prohibited, unless authorized, &c.,.....	442
---	-----

**LIQUORS, &c. — continued.**

owning and keeping liquors with intent to sell, prohibited unless authorized, &c.,.....	442
penalties for unlawful sales,.....	442
on second and subsequent convictions,.....	442, 443
on person employed by seller,.....	443
jurisdiction of such offences given to justices of the peace,.....	608, 609
penalty for being manufacturer or common seller,.....	443
on second and subsequent convictions,.....	443
on person employed by such manufacturer, &c.,.....	443
three several sales to be evidence of common seller,.....	443
several parties charged, and several offences may be included, in same complaint,.....	443
several offences may be tried at same time,.....	443
party convicted of several offences at one term, liable to same penalties as if convicted at different terms,.....	443
but aggregate term of imprisonment under one complaint, &c., or at same term, not to exceed one year,.....	443
delivery of liquor to be prima facie evidence of sale, except, &c.,.....	443
penalty for owning or keeping liquor with intent to sell,.....	443
for receiving liquor unlawfully sold, to be conveyed to another person,.....	443
on railroad corporations and their servants for receiving liquor unlawfully sold for transportation, &c.,.....	443, 444
for bringing into state with intent to sell, &c.,.....	444
husband, wife, parent, &c., may give notice in writing, to seller, not to deliver liquor to certain persons,.....	444
persons giving such notice may recover damages of seller for delivery of liquor after notice,.....	444
married woman may maintain action for such damages in her own name, and recover to her separate use,.....	444
persons unlawfully selling liquor liable for damages done by persons intoxicated thereby,.....	444
persons found intoxicated, in certain cases, may be arrested without warrant, &c.,.....	444
to be taken when recovered before police court, &c., on complaint for drunkenness,.....	444
to be discharged if they disclose name of party, &c., of whom they procured liquor,.....	444
complaint to be filed by officer, in such case, against party unlawfully selling liquor to such person,.....	444
forms of complaint, warrant, and mittimus, in cases of illegal sale, &c.,.....	449, 450
Search warrants for liquor kept for unlawful sale to be granted by justice of peace, &c., on complaint of two persons under oath, &c.,.....	444, 445
not to issue for search of dwelling-houses, unless, &c.,.....	445
place to be searched, &c., to be particularly designated in,.....	445
premises described in, to be searched and liquors seized and held by officer until final action,.....	445
form of, and of complaint for,.....	450, 451

1

1

1

1

1

1

1

1

1

1

1

**LORD'S DAY — continued.**

penalty on persons abiding and drinking at such place on,.....	484
on persons attending public amusements on evening of, or evening preceding, except, &c.,.....	484
for rude behavior, &c., in churches on,.....	484
for violations of, to be prosecuted within six months after offence,.....	485
innholders, &c., not to entertain, &c., persons, not travellers, on evening of, or on evening preceding, under penalty,.....	484
penalty on innholders, &c., for permitting implements of gaming to be used on, &c.,.....	485
sheriffs, grand jurors, &c., to inquire into violations of,.....	484
writs, &c., not to be served on,.....	484
persons serving writ, &c., on, liable in damages to party aggrieved,.....	484
persons who observe Saturday as the Sabbath, may perform secular business, &c., on,.....	485
bills of exchange, notes, &c., maturing on, when payable,.....	298
persons committed to jail on, or on afternoon or evening preceding, may be bailed on,.....	884

**LOST GOODS.**

or money, of three dollars' value, notice of, to be posted by finder,.....	425
notice of, to be given to town clerk,.....	425
to be entered by clerk in book kept for that purpose,.....	425
of ten dollars' value, how to be cried, or advertised,.....	425
how to be appraised,.....	425
appraisers of, by whom appointed and sworn,....	425
owner of, how to obtain, &c.,.....	425
to pay charges,.....	425
charges for keeping, &c., how determined,.....	425
finder of, to retain, if no owner appears within a year,.....	425
to pay half value of, to town treasury,.....	425
liable to suit, by treasurer, for half value,.....	425
penalty on, for neglect to give notice, &c.,.....	425

**LOTTERIES.**

punishment for setting up, or promoting, or disposing of property by, &c.,.....	823
for permitting the setting up, &c., of lotteries,.....	823, 824
for selling or permitting sale of tickets, &c.,....	824
for second offence, after conviction of a former,.....	824
for advertising, or exhibiting representation of, or of the drawing of,.....	824
for making, selling, or having with intent to sell, tickets, &c., in fictitious lottery,.....	824
on indictment for selling, &c., spurious tickets, they shall be deemed spurious, unless defendant prove them to be genuine, &c.,.....	824
prizes drawn in, and money, &c., received by holder of tickets, forfeited to commonwealth, how recoverable,.....	824, 825

**LOTTERY TICKETS, &c.**

search warrant may issue for,.....	830
------------------------------------	-----

**LOVEL'S ISLAND.**

ceded to United States,.....	44
------------------------------	----

**LOW LANDS.**

improvements on, how made, &c.,.....	750-758
--------------------------------------	---------

**LUMBER.**

Surveyor-general of, how appointed,.....	271
--	-----

**LUMBER — continued.**

limits of his district,.....	271
to reside in district and keep office in Boston,...	271
to be sworn, and give bond,.....	271
term of office,.....	271
not to be a dealer in lumber of the kind he is appointed to survey, &c.,.....	271
all applications for survey to be made to,.....	271
to appoint deputies, for whom he shall be responsible,.....	271
to keep record of lumber surveyed, and fees received by himself and deputies,.....	271, 272
such record to be open to inspection of city councils and selectmen,.....	272
to receive ten per cent. of deputies' fees,.....	272
to make annual returns to secretary,.....	272
Deputy-surveyors to be citizens of places for which they are appointed,.....	271
to be sworn, and give bond,.....	271
not to be dealers in lumber of the kind they are appointed to survey, &c.,.....	271
one or more to survey ship timber, one or more to survey ornamental wood, &c.,.....	271
fees of,.....	273, 274
Surveyors of, in places not included in surveyor-general's district,.....	272
cities may establish ordinances concerning appointment of,.....	272
duties of,.....	272
not to survey lumber in which they have a pecuniary interest,.....	272
fees of,.....	273, 274
penalty on, for fraud, neglect, &c.,.....	274
Division of, into sorts and numbers,.....	273, 278
pine boards and planks,.....	272
joints and dimension timber,.....	272
spruce, hemlock, juniper, southern pine, &c.,...	272
ash, maple, &c., boards, &c.,.....	272
sorts and numbers of hewn timber,.....	273
oak, juniper, and spruce knees,.....	273
mahogany and cedar,.....	273
hewn and round ship timber,.....	273
white and Norway pine, &c.,.....	273
Fees for surveying to be paid by purchaser,.....	273
Penalties on persons buying and selling without survey,.....	274
on persons acting as surveyors without authority,.....	274
LUNATIC, included in the words "insane persons." (See <i>Insane Persons</i> .)	
LUNATIC HOSPITALS, STATE.	
at Worcester, Taunton, and Northampton, to be under government of five trustees, to be appointed by governor, &c.,.....	406
Trustees of, may take and hold grants, &c.,.....	406
general powers and duties of,.....	407
to appoint superintendent, who shall be a physician,.....	407
to appoint treasurer and other officers,.....	407
to determine salaries of officers, subject to approval of governor and council,.....	407
what visitations of hospitals to be made by,....	407
to make report annually to governor and council,.....	407
to audit report of treasurer, and transmit it with report to governor and council,.....	407
to make certain inventories annually,.....	55
Treasurer of, to be appointed by trustees, and to give bond,.....	407
books of, to be at all times open to inspection of trustees,.....	407
Lunatics, how and by whom committed to,....	407, 408

10  
LUI

MA

MA

MA

MA

MA

MA

MA

,

MA

MA



**MANUFACTURING CORPORATIONS — continued.**

be made under oath, and published, setting forth name and purpose of association, &c., .....	339, 342
certificate also to be filed with secretary, .....	339, 342
to be filed with city or town clerk, .....	339, 342
also to be filed within thirty days after payment of any instalment, .....	339, 342
no loan of money to be made by company to stockholder, under penalty on officers, .....	339
debts of, not to exceed amount of capital stock paid in, .....	339
in case of excess, directors, unless absent at the time of contracting debt, to be liable, .....	339
incorporated before 23d February, 1830, &c., to have all rights, privileges, &c., then enjoyed, .....	339
if such corporation adopt provisions of chapter sixty, and record certificate thereof, &c., stockholders not to be liable for debts contracted afterwards, .....	339
penalty for making false certificate, .....	340
debts of, may be recovered of officers liable therefor, in action of tort, .....	340
such action may be brought, although action may be pending against company for same debt, .....	340
and both actions may be prosecuted until plaintiff recover his debt, .....	340
persons and property of stockholders, liable for debt of company, may be taken on execution, &c., against company, .....	340
not to be taken on execution in any action commenced since 24th of June, 1851, unless, &c., .....	340
what charters revocable by legislature, .....	340
for manufacture of cotton or woollen goods, may manufacture certain other goods, .....	340, 341
provisions concerning, may be amended by legislature, .....	341
Shares, to be transferred by proprietor in writing, and recorded by clerk, .....	337
purchaser of, on delivering former certificate to clerk, entitled to new certificate, .....	337
may be assessed, &c., not exceeding amount at which each share was originally limited, .....	337
may be sold to pay assessments, .....	337, 338
Officers, how chosen, .....	338
manner of choice to be prescribed by the laws, .....	338
liability of, for not making certificate of stock, &c., .....	338
making or assenting to loan to stockholder liable to the extent of such loan, &c., .....	339
penalty on, for making false certificate, .....	340
or stockholders, paying debt for the company, &c., may recover, &c., against the company, .....	340
President, how chosen, .....	339
directors, &c., after capital is paid in, to make certificate, &c., under oath, .....	338
such certificate to be recorded in the registry of deeds, &c., .....	338
certificate of additional capital to be made and recorded in the same manner, .....	338
penalty on any of said officers for refusal or neglect to make certificate, &c., .....	338
Directors to be chosen annually, .....	338

**MANUFACTURING CORPORATIONS — continued.**

to be not less than three, .....	338
one of them to be chosen president, &c., .....	338
to be liable for debts of company, if vote to reduce capital is not recorded, &c., .....	338
to be liable for debts, &c., if they declare and pay dividend when company is insolvent, &c., .....	339
in such case, amount of liability not to exceed amount of dividend, .....	339
those absent at the time of making dividend, or objecting thereto, &c., exempted from liability, .....	339
to be liable for debts exceeding amount of capital stock, unless absent when debt was contracted, &c., .....	339
may exempt themselves from such liability by forthwith giving notice to stockholders, &c., .....	339
Clerk to be chosen annually, &c., .....	338
to be sworn, .....	338
to record all votes, &c., .....	338
Treasurer to be chosen annually, .....	338
to give bond, .....	338
to give notice, &c., of sale of shares, &c., .....	338
Stockholders, absent, may vote by proxy, .....	337
proxy not valid unless executed within six months previous to meeting, &c., .....	337
no proxy or attorney to cast more than fifty votes, &c., .....	337
and no officer, as proxy, to cast more than twenty votes, .....	337
liable, if any part of capital is withdrawn before payment of debts of company, &c., .....	338
to be liable for debts of company, if statement of affairs, &c., is not published annually, .....	338
persons and property of, liable for debt of company, may be taken on execution, &c., against company, .....	340
persons and property of, not to be taken on execution in any action commenced since 24th June, 1851, unless, &c., .....	340
stockholder summoned, to be admitted to defend, and may have judgment entered for him, and judgment may be entered in same action against company, .....	340
supersedes as to stockholder to be annexed to execution on such judgment, .....	340
if person or property of officers cannot be found, then person or property of stockholders may be taken on execution, .....	340
provisions referred to not to apply to executions issued on actions pending on 24th June, 1851, .....	340
officer paying debt of company, &c., may recover against the company, property of stockholders not liable, &c., .....	340
Assessments may be made by company, from time to time, at legal meetings, .....	337
not exceeding in the whole the amount at which each share was originally limited, .....	337
if proprietor neglects for thirty days to pay, his shares to be sold, .....	337, 338
members jointly and severally liable for all debts, &c., until capital stock is fixed, &c., and paid in, .....	338

(See Corporations.)

**MANUFACTURING ESTABLISHMENTS.**

children between twelve and fifteen years of age,

**MANUFACTORY ESTABLISHMENTS—continued.**

&c., not to be employed in, unless they have attended school eleven weeks in the preceding year, &c., .....	229, 230
under twelve years of age, not to be employed in, unless they have attended eighteen weeks, .....	230
penalty on owner, &c., of, for violation of these provisions, .....	230
how and to what use recovered, .....	230
children under twelve, not to be employed in, more than ten hours a day, under penalty, .....	230

**MARBLE.**

city and town authorities may establish survey of, .....	274
--	-----

**MARBLEHEAD NECK.**

land at, ceded to United States, for lighthouse, .....	45
--	----

**MARBLEHEAD ROCK.**

ceded to United States, .....	44
-------------------------------	----

**MARINERS.**

provisions concerning, .....	299, 290
(See Seamen.)	

**MARKS.**

on logs, &c., in streams, &c., penalty for cutting out, .....	494
on inspected hops, penalty for altering or counterfeiting, .....	268
on leather, penalty for defacing, &c., .....	270
trade marks, how protected, .....	296

**MARRIAGE.****WHO MAY CONTRACT, SOLEMNIZATION OF, &c.**

between certain relations, prohibited, .....	528, 529
vold, if contracted between such relations, .....	531
vold, if contracted while either party has former husband or wife living, .....	529, 531
if either party is an insane person or idiot, .....	529, 531
in this state, if solemnized out of state to avoid prohibition, .....	529
when, if parties are under age of consent, .....	531, 532
intention of, to be entered with town clerk or register in place of residence of parties, .....	529

Certificate of such entry to be given to parties by clerk, .....	529
--	-----

to be delivered to minister or magistrate before

**MARRIAGE—continued.**

not invalid for want of authority in person solemnizing, if either party believes it lawful, .....	530
admission of, by respondent in process before a court, or general repnte, &c., to be competent evidence of marriage, .....	530
solemnized in foreign country by consul, &c., of United States, valid, .....	531
certificate of, from such consul, &c., to be presumptive evidence thereof, .....	531
validity of, not to be tried on collateral issue, .....	531
when void, may be annulled by decree of nullity or divorce, .....	532
when validity of, is denied, &c., may be declared valid by decree, .....	532
of persons divorced from bond of matrimony, in certain cases, may be authorized by court, .....	534
of innocent party, after divorce, allowed, .....	534
of guilty party, after divorce, void, &c., .....	534
dissolved or annulled, on account of consanguinity, issue of, to be deemed illegitimate, .....	534
on account of adultery of wife, legitimacy of issue not affected, but if questioned may be tried at common law, .....	534
on account of nonage, insanity, or idiocy, legitimacy of issue not affected, .....	534
of executrix, administratrix, and guardian, extinguishes her authority, .....	504, 545
of a female ward, extinguishes guardian's authority as to custody, &c., .....	546
no action to be brought on agreement in consideration of, unless in writing, &c., .....	537

**RECORD OF.**

city and town clerks to record and index facts concerning, .....	168
form of record, .....	168
return to be made by clerk to secretary, under penalty, .....	169
certificate of clerk to be evidence of such record, .....	169
towns may make additional rules concerning registration of, .....	170
registrars may be appointed in certain towns to make record, &c., concerning, .....	170
record of, to be kept by persons solemnizing, .....	530
copies of such record to be returned monthly to town	

**MARRIED WOMAN—continued.**

settlement of, not lost by marriage, if husband has none, .....	890
may maintain action for damages against person unlawfully selling liquor, after notice from her, .....	444
policy of life insurance for benefit of, to insure to her separate use, &c., .....	830
trustee may be appointed in such case, to hold interest of, &c., .....	830
administration on estate of, to be granted to her husband, unless, &c., .....	438
intestate, husband of, entitled to residue of personal estate after payment of debts, &c., .....	438
divorced, may assume maiden name, .....	538
divorced for adultery by, when not to affect legitimacy of issue of marriage, .....	534
to be protected from restraint by husband during pendency of libel, .....	534
not liable as accessory after the fact for felony committed by husband, .....	826
entitled to dower, on divorce for adultery or confinement in state prison, &c., of husband, .....	536
in what case entitled to her real estate on divorce, .....	536
may recognize as a witness, .....	838
another person may recognize for, .....	838
penalty on, for burning dwelling, or certain other property of her husband, .....	796
may prosecute and defend suits commenced by and against her before marriage, .....	650
may be witness in action against husband, founded on certain matters relating to wife, .....	674
(See Allowance, Dower.)	

**SEPARATE RIGHTS, LIABILITIES OF, &c.**

may hold property and earnings to her sole and separate use, &c., .....	537
property of, so held, not subject to control of husband, nor liable for his debts, .....	537, 538
real estate of, not her separate property, how conveyed, .....	538
may sell and convey separate property, carry on business, &c., .....	538
when such conveyance not valid without assent of husband, &c., .....	538
husband not liable for contracts of, in relation to her separate property, &c., .....	538
trustee may be appointed on petition of, to take charge of her separate property, .....	538
wages, &c., of, may be paid to, .....	538
receipt of, for income of her property, &c., valid without husband joining, .....	538
property of, received otherwise than from her husband, not liable for husband's debts, contracted after June 3, 1855, .....	538
having separate property, may be sued for debts contracted before marriage, .....	538
husband of, married since June 3, 1855, not liable for debts of, contracted before marriage, .....	538
may make will of her real and her separate personal estate, .....	538
will of, not to deprive husband of more than one half of personal estate, without his consent in writing, .....	538
not to impair husband's rights as tenant by the curtesy, without his written assent, .....	539

**MARRIED WOMAN—continued.**

husband not authorized to convey property to, .....	539
may release dower on sale of land by guardian of her husband, .....	539
may join with guardian of husband, in conveyance of her land, .....	539
proceeds of such sale, how disposed of, &c., .....	539
agreement by, with guardian of husband, relative to disposal of such proceeds, valid, .....	539
damages awarded for land of, taken by railroads, &c., how disposed of, .....	539
may join with guardian of husband in making partition of her real estate, .....	539
guardian of, may join with husband in making partition of her real estate, .....	539
may be put under guardianship for same cause as if sole, .....	539, 543, 544
guardian of, not to be appointed without notice to husband, .....	539
not to have care, custody, &c., of, except when husband is insane, &c., .....	539
not to apply her property to support of herself and family, unless by leave of probate court, .....	539, 540
may be appointed to release dower and homestead in case of insanity, .....	540
proceedings in such cases, .....	540
when dower or homestead is so released, part of proceeds of sale may be reserved for use of, .....	540
such proceeds, how to be invested, &c., for benefit of, .....	540
when provision is made for, in lieu of dower, estate, how conveyed, &c., if she is insane, .....	540
dower of, how released by guardian in such case, .....	540
proceedings in probate court in such cases, in what county to be had, .....	541
certified copies of decrees of court in such cases to be recorded in county, &c., where land lies, .....	541
allowance to, out of estate of insane husband, how made, .....	541
contracts may be made before marriage to secure property to, .....	541
in such case, what to contain, when to be recorded, &c., .....	541
Coming into state without husband, he never having lived with her in the state, may make contracts, convey property, &c., in her own name, as if unmarried, &c., .....	541
liable to be sued on such contracts, &c., as if unmarried, .....	541
Coming into state with husband, to retain rights and property previously acquired, .....	541
subsequent rights and liabilities of, same as if married in the state, .....	541, 542
Abandoned by husband, or he being sent to state prison, may be authorized to sell and convey her real and personal estate, and personal estate of husband, in her right, .....	542
may use and dispose of such property during husband's absence, &c., as if unmarried, .....	542
may be authorized to make contracts, &c., in her own name, .....	542

**MARRIED WOMAN — continued.**

- authority so granted to continue till return or discharge of husband,..... 542
- suits in which she is a party, not to abate by husband's return, . . . . . 542
- judgment against, recovered in such suit, may be enforced against husband,..... 542
- petitions of, may be filed and heard by supreme judicial court, in any county,..... 542

**MARSHAL OF UNITED STATES.**

- exempted from serving as juror,.....679, 680

**MARSHALS.**

- at cattle shows, how appointed, and powers and duties of, . . . . . 378

**MARSHES.**

- provisions for improvement of, . . . . . 750-752

**MARSHPEE.**

- District of, to continue to be district and retain powers conferred by special acts,..... 165
- regulations concerning shell fish in,..... 489
- Indiana, appropriations, &c., for schools for,..... 212

**MARTHA'S VINEYARD.**

- land for lighthouse in, at Gay Head, ceded to United States,..... 44
- land and hospital in, ceded to United States,..... 44
- land at Holmes's Hole, for lighthouse, ceded to United States,..... 44
- land at Tisbury in, ceded to United States,..... 45

**MASKED BALLS.**

- penalty on persons setting up, &c.,..... 464
- offenders to be bound over to superior court, and furnish sureties of the peace, &c.,..... 464

**MASONIC TEMPLE.**

- in Boston, ceded to United States,..... 45

**MASSACHUSETTS. (See Constitution.)**

- constitution of,..... 12-40

**MASSACHUSETTS GENERAL HOSPITAL.**

- payment to be made to, by life insurance companies, &c.,..... 330

**MASSACHUSETTS SOCIETY FOR THE PROMOTION OF AGRICULTURE.**

- provisions respecting premiums offered by,..... 377

**MASTER.**

- to be bound by indenture when he takes a or servant,.....
- money, &c., paid by, to be for use of tice, .....
- complaint for misconduct of, may be determined in superior court, ..
- may be heard with or without jury,...
- may be discharged from his contract by costs, in such cases, how awarded as ered,.....
- liable to action on indenture,.....
- damages recovered of, in such case, to be of apprentice,.....
- limitation of action against, by apprentice, death of, to discharge apprentice,.....

**MASTER OF HOUSE OF CORRECTION.**

- to notify judge of insanity of prisoner,.....
- to report poor convicts, who have been out three months,.....
- (See Houses of Correction.)

**MASTERS IN CHANCERY.**

- now in office, to continue, .....
- not more than five in each county, to be by governor and council,.....
- to be sworn, and hold office for five years, ..
- to perform duties under direction of court, ..
- fee of such, how taxed and paid,.....
- reports of, to bear interest,.....

**MASTERS IN CHANCERY — continued.**

- when all in the county are interested, or disqualified to act in any matter, court may appoint some other person,..... 616
- may approve bonds to dissolve attachments, proceedings in such cases,..... 612
- proceedings of, to be finished after termination of commission, .....
- to finish cases in insolvency commenced before, and to return all papers and records in such cases to registers of probate and insolvency, .....
- witnesses, how may be summoned, and compelled to attend before, and sworn,.....672, 673
- punishment of, for accepting bribes,..... 512
- punishment for bribing, or attempting to bribe them,..... 512
- may authorize arrests on mesne process and execution in civil actions,.....623, 624
- examine, discharge, or commit poor debtors arrested, .....
- fee of, in such cases, .....
- may approve bail bonds,..... 642
- take depositions to perpetuate testimony,..... 676

**MATERIALS.**

- for carrying on trade or business, what exempt from levy on execution and from attachment,.....624, 626

**MAYHEM.**

- punishment of,..... 732
- attempt to commit,..... 732

**MAYOR.**

- may make requisition for militia in case of riot,..... 116
- duty of, in suppressing riotous and unlawful assemblies,..... 913
- penalty for neglect of duty,..... 815
- with consent of aldermen, may remove constable for gross misconduct,..... 120
- if not elected, when chairman of board of aldermen to act until, &c., .....
- when may hold other city offices,..... 167
- exempted from liability to watch,..... 174

**MAYOR AND ALDERMEN—continued.**

duties of, in organisation of companies of militia.....	94
to provide armories for military companies, and transmit certificates of rent, &c., to adjutant-general.....	104
to provide carriages and camp equipage for militia drafted in case of invasion, &c.,.....	110
duties of, respecting compensation of militia.....	111
may make rules for regulation of carriages, &c.,.....	167
to appoint agents to take census,.....	168
to appoint officer of watch, &c., when watch is established,.....	178
may order watch, when none is established,.....	178
power of, at fires, when firewards are not present,.....	178
may appoint enginemen, &c., and discharge them in places where there is no fire department,.....	177, 178
may enforce vaccination of inhabitants when public health requires,.....	191
may appoint truant officers,.....	220
powers of, in relation to ways dedicated to public, but not laid out and accepted,.....	243
to cause permanent bounds to be placed at angles of ways laid out by them,.....	244
to ascertain correct location of streets, &c., in certain cases,.....	248
to regulate water courses in public ways, &c.,.....	248
to determine damages occasioned by repairs, &c., of highways,.....	247
may establish and grade sidewalks in certain cases,.....	250
powers and duties of, in relation to sewers and drains,.....	254
to appoint measurers of grain and meal,.....	266
may appoint and remove weighers of hay, &c., where provisions of statute are adopted by city council,.....	266
may establish regulations for survey of marble,.....	244
to appoint inspectors of milk,.....	274
may appoint weighers of coal,.....	279
to appoint persons to seize illegal measures, &c., of charcoal, &c.,.....	280
may license auctioneers, &c.,.....	280
may make regulations restraining, &c., minors, from hawking and peddling certain articles,.....	281
duties of, respecting unclaimed effects of passengers in possession of common carriers,.....	427
to enforce provisions of game laws,.....	430
may grant permits to take oysters and other shell fish from beds,.....	482
may grant licenses to plant and grow oysters,.....	483
to appoint agents to sell intoxicating liquor for medicinal, &c., purposes, annually,.....	440
penalty on, for neglect,.....	440
to prosecute for breach of bonds of such agents,.....	441
powers of, to abate certain nuisances,.....	453, 454
may grant licenses to innholders, &c., and revoke the same,.....	455, 456
to furnish summary of laws, relating to innholders, to persons licensed,.....	457
may grant licenses to keepers of intelligence offices, dealers in second hand articles, pawn-brokers, &c.,.....	457, 458
licenses for steam engines, &c., in certain places, &c., and regulate the use of the same,.....	458, 459
licenses for billiard tables, &c., and for theatrical shows, &c.,.....	463

**MAYOR AND ALDERMEN—continued.**

may examine steam engines and boilers, and suspend or prohibit use thereof,.....	459, 460
may remove steam engines, &c., as nuisances in certain cases,.....	460
to require unlicensed dogs to be destroyed,.....	462
proceedings by, in relation to raising or lowering highway crossed by railroad,.....	357
to apply to county commissioners before laying out highway across railroad,.....	358
powers, &c., of, in relation to signboards and gates, &c., at railroad crossings,.....	360, 361
certain acts and doings of gas-light companies to be under control of,.....	343
to designate where posts of telegraph companies shall be located,.....	373
to assess damages to land owners in such cases,.....	373
compensation of, for services, &c.,.....	373
may offer reward, not exceeding five hundred dollars, for arrest of certain offender,.....	381
proceedings in such cases, where more than one claimant appears,.....	381
words, when applying to Boston, to mean the board of aldermen,.....	167
<b>MEADOW, BEACHES, SWAMPS, MARSHES, LOW LANDS, &amp;c.</b>	
held by several proprietors, how may be drained, flowed, &c.,.....	750, 751
person in possession to be deemed proprietor when premises are mortgaged,.....	752
proprietors of, may petition superior court, setting forth proposed improvements,.....	751
court, on hearing, after notice given, may appoint commissioners to cause improvements to be made,.....	751
commissioners to be sworn, to view the premises, give notice, &c.,.....	751
to prescribe measures for making improvements,.....	751
power of, to erect dams, &c., to order lands to be flowed, open ditches, remove obstructions in streams, &c.,.....	751
to open floodgates of mills, and make passages through or round dams of third persons,.....	752
may employ persons to perform the above work, unless proprietor does it,.....	751
shall apportion and assess expenses on proprietors, and may appoint and give warrant to a collector,.....	751
power, liability, and compensation of collector,.....	751
how commissioners shall apportion expense on tenants and reversioners,.....	751, 752
expense paid by mortgagees, to be allowed him as in case of other improvements,.....	752
damages caused by opening floodgates, &c., to be determined and paid by commissioners, unless, &c.,.....	752
commissioners to make return of their doings to court, including account of money assessed and collected,.....	751
appeal may be taken to superior court from any doings of commissioners,.....	752
shall suspend proceedings on third persons' lands,.....	752
superior court may affirm, reverse, or alter orders of commissioners,.....	752
shall determine compensation of commissioners,.....	751
questions of fact, arising on the hearing of appeals, to be tried by jury, on motion of either party,.....	752

**MEADOWS, &c. — continued.****CONSTRUCTION OF ROADS, &c., TO.**

proprietors, how authorized to establish roads  
drains, ditches, tunnels, and railways  
over other lands,.....  
may apply to county commissioners,.....  
application, what to contain,.....  
notice of, how given,.....  
duty of commissioners,.....  
parties aggrieved may appeal as in case of highways,.....  
improvement, when made, how repaired,.....

**MEAL. (See Grain and Meal.)**

provisions respecting,.....

**MEASURES. (See Weights and Measures.)**

provisions respecting,.....

**MEASURERS.**

of grain and meal, how appointed,.....  
may be authorized to appoint deputies,.....  
duties and fees of, and their deputies,.....  
penalty on, for using false weights,.....  
of wood and bark, to be chosen at annual town meeting, unless selectmen authorized to point,.....  
to be sworn,.....  
to measure wood, &c., and deliver certificate quantity,.....  
fees of, and by whom paid,.....

**MECHANICS.**

necessary tools of, exempted from taxation,.....  
not exceeding one hundred dollars in value  
exempted from attachment and execution,.....

**MECHANICS' LIEN. (See Lien.)**

provisions respecting,.....762.

**MEDICINES. (See Drugs.)**

fraudulent adulteration of, how punished,.....

**MEETING-HOUSES, (see Parishes and Religious Societies.)****MERRIMACK RIVER.**

buoys at mouth of, ceded to United States,.....  
Half-tide and North rocks in, ceded to United States,.....

**MESSENGER.**

of governor and council, how appointed, and term of office,.....  
duties and salary of,.....  
may employ an assistant,.....  
duties and compensation of assistant,.....  
under laws relating to insolvent debtors, duties of,.....  
fees of, and how paid,.....

**MESSENGERS.**

of senate and house of representatives, compensation of,.....

**METALS AND ORES.**

assayers of, how appointed,.....  
duties and compensation of,.....

**METHODIST EPISCOPAL CHURCH.**

trustees of any society of, may become corporation,.....  
powers of such trustees,.....  
limitation of annual income,.....  
organization of trustees,.....  
copy of record of organization to be left with clerk,.....

**MIDDLESEX COUNTY.**

Chelsea, North Chelsea, and Winthrop, to vote with for county commissioners,.....  
jurisdiction of, in common with Suffolk, over part of Charles River,.....

# INDEX.

## MILITIA.—continued.

Companies inconveniently located, how to receive orders and make returns, .....	94
attached to divisions, how to receive orders and make returns, .....	94, 95
may be disbanded by commander-in-chief for failure to comply with law relative to uniform, equipment, &c., .....	95
if, when twice ordered, they neglect to elect officers, .....	95
if reduced to less than thirty-two privates for six months, .....	95
if less than thirty-two privates appear for duty, .....	95
articles of agreement of, .....	107
Bands may be enlisted by commanders of regiments, &c., .....	95
of what number to consist, .....	95
to provide themselves with uniforms and instruments, under penalty, .....	95
by whom taught and commanded, .....	95
Soldiers, how discharged, .....	95
not to aid in seizing fugitives from service, ....	741
penalty for so aiding, .....	741
not to apply to any act of military obedience and subordination, .....	742
<b>2. OFFICERS, APPOINTMENT, ELECTION, QUALIFICATION, AND DISCHARGE.</b>	
Commander-in-chief, governor to be, .....	28
general powers of, .....	28
may order out militia in case of war, invasion, riot, &c., .....	92, 109, 110
power and duty of, as to organizing and disbanding companies, .....	94, 95
aids of, .....	24, 95, 97
may arrange militia into divisions, brigades, &c., .....	94
to commission all commissioned officers, .....	98
orders of, by whom distributed, .....	101
may sell certain military stores, .....	104
may detail officers at any time to examine armories, .....	104
may order out any portion of militia for escort, &c., .....	107
may reverse judgments of courts martial, .....	119
may call boards of officers to settle military questions, .....	120
may appoint commanding officer when electors fail to choose, .....	99
Adjutant-general, (See 3.), .....	24, 97, 101
Quartermaster-general, appointment and rank, ..	95, 97
when office vacant, who to act, .....	95
Major-general, how chosen or appointed, and commissioned, .....	24, 95, 97
how notified of election, .....	98
when to signify acceptance of office, .....	98
staff, of what to consist, how appointed, and rank, .....	95, 97
Brigadier-general, how chosen or appointed, and commissioned, .....	24, 97
staff, of what to consist, appointment and rank, .....	95, 97
Regimental field officers, of what to consist, and by whom elected, .....	95, 97
staff, of what to consist, appointment and rank, .....	95, 97
non-commissioned staff, of what to consist, and how appointed, .....	95, 97
Battalion field officer, who to be, and how elected, .....	95, 97

## MILITIA.—continued.

staff, of what to consist, appointment and rank, .....
non-commissioned staff, of what to consist, how appointed, .....
Company officers, of what to consist, how elected, .....
non-commissioned officers, of what to consist, how appointed, and rank, .....
clerk, how appointed, .....
to be a sergeant, and have appointed on warrant, .....
to keep company roll and orderly to record orders and notification book, .....
duties of, how performed when absent, .....
without officers, how to be commanded, refusing or neglecting to elect officers, .....
commanded, until, &c., .....
when commanding officer of division is absent, &c., next in command, .....
Commissions, to be given by commanding officer, .....
rank to be determined by date of, .....
how, when of even date, .....
day of appointment, &c., to be expressed, how to be transmitted, .....
loss of, how supplied, .....
refusal to accept, or qualify, to be elected, and returned to adjutant-general of staff officers, when to expire, .....
who ineligible to office, .....
if person ineligible is chosen, command to appoint another, .....
Election of officers to fill vacancies to be given, .....
notice of, when and how to be given, who to preside at, .....
roster, &c., to be produced at, .....
may be adjourned twice, .....
who to be deemed elected, and how to be accepted, when to be signified, .....
new, to be had at same meeting, if person refuses to accept, .....
may be ordered after refusal to choose, unless, &c., .....
returns of, how and to whom made, .....
upon refusal to choose at, command &c., to appoint, .....
by whom called in companies without officers, .....
candidates not to treat with intemperance, .....
liquors, .....
officers, &c., going to, &c., not to be in civil process, .....
acceptance of new office, to vacate one held, .....
Oath of commissioned officer, form of, and administered, .....
to be certified on commission, .....
form of certificate, .....
of clerk of company, form of, and by whom administered, .....
to be certified on warrant, .....
Discharge may be granted upon request, .....
resignation not to be approved before and November, unless for urgent reasons, .....

**MILITIA — continued.**

remedy when approval is unreasonably refused, .....	100
resignation, not to be made by officer under arrest, .....	101
of non-commissioned officer and clerk of company, ....	101
not to be given without officer's request, except, &c., .....	100
may be given without request when unfit to discharge duties or is a convict, .....	100
when he has removed to inconvenient distance from his command, ....	100
when absent more than a year without leave, ..	100
upon address of legislature, .....	100
upon sentence of court-martial, .....	100
when corps is disbanded, ..	101
upon accepting appointment in United States army, .....	101
of staff officers, .....	101
officers to perform duties until discharged, ..	101
may be removed as legislature prescribe, .....	82

**3. ADJUTANT-GENERAL.**

how appointed, .....	24, 97
to be inspector-general, .....	96
to act as quartermaster-general when that office is vacant, ....	96
rank of, ..	95
tenure of office, .....	101
to give bond, .....	101
salary of, .....	101
clerk of, and salary, .....	101
to have custody of magazines, munitions of war, &c., ..	65
to distribute all general orders, .....	101
to attend commander-in-chief at reviews, ....	101
to furnish blank rolls and returns, and blanks for company orders, .....	101
to make abstracts of returns of officers of brigades, &c., annually, .....	101
to make returns, annually, of militia, &c., to president of United States and commander-in-chief, .....	101
to transmit to selectmen, &c., certified hand and company pay rolls within two receipt thereof, ....	
to make, annually, certified roll of officers to pay, and ascertain amount reimburse towns, and submit auditor, ..	
to lay before auditor, annually, an account of expenditures, .....	
to distribute arms, equipments, &c., at public expense, .....	
may sue for damage to articles so furnished to receive arms, &c., from dishonour, ..	
may permit certain field pieces to remain in towns, &c., ..	
to audit and allow claims for rent of arms duty of, in regard to compensation of soldiers, .....	
to present to auditor accounts of expenditures for general, ..	
to examine and certify all military accounts such accounts to be allowed by and not to be allowed, &c., unless prescribed by law, ..	
to report annually, to legislature, exp office, .....	

**MILITIA — continued.****4. ARMS, EQUIPMENTS, EQUIPAGE, &c.**

Uniforms to be such as prescribed by commander-in-chief, .....	102
officers and soldiers to provide themselves with, under penalty, .....	102
exempted from attachment, &c., ..	102
Tents and other camp equipage to be furnished by state to commanders of divisions, brigades, &c., ..	102
such officer to be responsible therefor, ..	102
how released from responsibility, .....	102
Colours to be furnished to regiments and battalions, .....	102
commanding officers responsible, ..	102
commander of brigade may draw order for, ..	102
Arms and equipments to be furnished to companies on application, .....	102, 103
to be kept in an armory, ..	103, 104
commissioned officers responsible for, .....	103
how discharged from responsibility, ..	103
to be received by adjutant-general when companies are disbanded, .....	103
officers to provide themselves with, ..	102
Instruments of music to be furnished, as commander-in-chief shall order, ....	103
commander of brigade may draw order for, ..	103
commanders of companies responsible, ..	103
Cannon, &c., to be furnished to artillery, ..	103
when in state of war, &c., ammunition may be furnished for target practice, .....	103
commissioned officers accountable, .....	103
expenses of battery, &c., how paid, ..	103
Scott's Infantry Tactics, &c., to be furnished to certain officers, .....	103
such books to be delivered to successors, ..	103
Military stores may be sold, &c., by commander-in-chief with advice of council, ..	104
at arsenal in Cambridge, to be examined, &c., annually, .....	104

**5. ARMORIES.**

armories to be provided by selectmen, &c., ..	104
certificate under oath of necessity of, name of company and rent to be transmitted to	



**MILITIA — continued.**

orders and notifications to be recorded by clerk in orderly book,.....	105
<b>7. DISCIPLINE, TRAININGS, INSPECTION, AND CAMP DUTY.</b>	
Discipline to be same as in United States army,....	105
Elementary drills may be ordered by commanders of regiments, &c.,.....	105
on two separate days between middle of May and middle of July,.....	105
penalty for non-attendance, how recovered, ....	105
Encampments, orders for, how and when issued,.....	105
when to be held,.....	105
to continue three days,.....	105
place of, to be designated by commander of troops to be assembled,.....	105
and time of, if not designated by commander of division,.....	105
no ground to be occupied for, without consent of selectmen, &c.,.....	105, 108
officers and soldiers not obliged to march more than fifteen miles, except,.....	105
parade of larger body than brigade to be ordered by commander-in-chief,.....	105
troops to be inspected, reviewed, exercised, &c., at,.....	105
penalty on non-commissioned officers and privates neglecting to appear,.....	105
company roll calls, under whose supervision made,.....	105
rank of corps in the field,.....	105
when distinct corps parade together, senior officer present to command,.....	105
company without commissioned officers parading with other troops, how commanded,.....	97, 105
Inspection of regiments, &c., by brigade major and inspector,.....	105
officers and soldiers may drill in camp in fatigue dress,.....	105
Parade, bounds of, may be fixed by commander,.....	105
punishment for intrusion within such bounds,.....	105
officers and soldiers not holden to do duty on election days, except, &c.,.....	105
penalty on officer for parading company on election day,.....	105
troops may be ordered out by commander-in-chief for escort duty, &c.,.....	107
music at such parades, how paid for,.....	107
voluntary parades allowed,.....	107
and such as prescribed by articles of agreement of companies, &c.,.....	107
remedy for breach of articles of agreement,.....	107
penalty on non-commissioned officer and private for deficiency in arms, &c., at parade, required by law,.....	107
penalty on soldier for having arms loaded with ball on parade,.....	107
for discharging musket, &c., without order from officer,.....	107
for disorderly conduct, &c.,.....	107
for quitting guard, company, &c.,.....	107
in companies without officers,.....	107
<b>8. ROSTERS, ORDERLY BOOKS, ROLLS, AND RETURNS.</b>	
Rosters and orderly books of divisions, brigades, regiments, &c. by whom to be kept,.....	108

**MILITIA — continued.**

Orderly book of company, how and by whom kept,.....	105, 108
fines, &c., to be recorded in,.....	108
always to be open to inspection of officers,.....	108
Roll of company, how and by whom kept,.....	108
to be revised annually in May,.....	108
Returns of camp duty by companies to be made in duplicate, by commanders,.....	108
to be certified by commander of regiment and staff officer supervising roll,.....	108
one to be delivered to brigade-major, and the other transmitted to adjutant-general,.....	108
of companies attached to divisions, how certified,.....	108
of alphabetical pay rolls of companies, to be made under oath, within ten days,.....	108
pay roll not to contain name of private who has done duty as musician,.....	103
not to exceed the number allowed to company,.....	108
penalty for neglect in making, and for false return,.....	108
by masters of regimental, &c., band, to be made and transmitted to adjutant-general within ten days after parade,.....	108
to be certified by commanding officer to whom band reported for duty,.....	108
penalty for neglect and for false return,.....	109
by commanders of regiments, &c., of field and staff officers, on last day of camp duty,.....	109
and delivered to brigade-major or inspecting officer of camp,.....	109
penalty for neglect and for false return,.....	109
by brigade-major, to be made to commander of brigade, within twenty days after camp duty,.....	109
to be transmitted by him, under penalty, to commander of division within thirty days,.....	109
what to contain,.....	109
of rolls of field and staff officers of brigade to be transmitted to commander of division, &c.,.....	109
penalty for neglect and for false return,.....	109
commanders of divisions to make return of the state of their divisions,.....	109
to transmit certified roll of field and staff officers to adjutant-general,.....	109
penalty for neglect and making false return,.....	109
<b>9. CALLING OUT IN CASE OF WAR, INVASION, RIOT, &amp;c.</b>	
militia may be ordered out by commander-in-chief, to repel invasion, &c.,.....	109
when may be ordered out by commander of division in such case,.....	109, 110
when draft is ordered, how to be made,.....	110
officers to be regularly detailed,.....	110
company without officers, by whom commanded, &c.,.....	110
penalty on soldier neglecting to appear, &c.,.....	110
soldiers to take provisions if ordered,.....	110
selectmen, &c., to furnish carriages, camp equipage, &c.,.....	110
penalty on town for neglect,.....	110
officer receiving articles from town, &c., to be responsible therefor,.....	110

**MILITIA—continued.**

in case of riot, &c., troops may be called out, by order of governor, or precept of magistrates, &c., .....	110, 815, 816
whose orders to obey in such cases, .....	816
form of precept, .....	110, 111
penalties for disobedience, .....	111
troops to appear armed and equipped as for inspection, .....	111

**10. COMPENSATION.**

Compensation to general, field, and staff officers, .....	111
to inspectors, and adjutants of regiments, &c., .....	111
to officers and soldiers of companies, .....	111
to members of bands, .....	111
how computed, disbursed, &c., .....	111
not to be allowed, unless full duty is performed, except, &c., .....	112
nor unless performed personally, .....	112
for travel in attending elementary drills, .....	112
of detachment on special duty, .....	112
to officers for travel in attending elections, .....	112
to officers composing courts martial, courts of inquiry, and military boards, for travel and attendance, .....	112
to witnesses, for travel and attendance before such courts, &c., .....	112
fees for subpoenas, &c., same as in civil cases, .....	112
not allowed for military guard unless ordered by officer appointing court, .....	112
of militia in actual service same as regular troops of United States, .....	112
additional, for uniform, .....	112
when discharged, to be allowed pay and rations to their respective homes, .....	112
relief to soldiers disabled while performing duty, .....	112, 113
military accounts, &c., how examined, certified, and paid, .....	113

**11. EXCUSES.**

Excuse for non-appearance may be granted by commanders of companies if applied for within twenty days after training, &c., .....	112
not to avail on prosecution for fine, unless proved to have been made within time, &c., .....	112
clerks to be informed of, by officer allowing, .....	112
not to be granted for deficiency of equipment, .....	112
certain conditional exemptions not to be, unless, &c., .....	112

**12. FINES AND PENALTIES.**

Fines and penalties to be recorded in company orderly book, .....	106
on boarding-house keepers, &c., for not giving names of persons liable to enrolment, .....	91
on commanders of regiments, &c., for neglect to make return of field and staff, &c., .....	109
on commanders of brigades for neglect to transmit returns, &c., .....	109
on commanders of divisions for neglect to make returns and false return, .....	109
on soldiers for not appearing when drafted for actual service, .....	92

**MILITIA—continued.**

on towns for neglect to provide ammunition, &c., when required, .....	2
for false certificate of selectmen concerning armories, .....	111
on member of band for not providing himself with uniform, &c., .....	95
on master of band for not making return of duty, and for false return, .....	10
on officers and soldiers for deficiency in uniform, .....	102
for not attending at elementary drills, .....	105
for breach of articles of agreement of companies, .....	107
on non-commissioned officers and privates for absence from company election, .....	96, 10
failing to notify companies for parade and elections, .....	104, 105
neglecting to appear at encampment, .....	106
for deficiency in arms, &c., at parades, .....	107
for quitting guard, company, &c., .....	107
for intrusion within bounds of parade, .....	106
on officer for parading company on election day, .....	102
commander of company for neglect in making returns of camp duty, &c., .....	106
for refusing to obey order in case of riot, .....	111
on soldier for having arms loaded with ball on parade, .....	107
for discharging musket, &c., while on, or going to, or returning from, parade, without order, .....	107
for disorderly conduct and neglect of duty on parade, .....	107
for neglecting to appear when drafted in case of invasion, riots, &c., .....	110, 111
to company without officers, how recovered, &c., .....	107
on brigade-major for neglect in making returns and false return of camp duty, &c., .....	109
on towns for neglecting to provide cartridges, &c., in certain cases, .....	110

# INDEX.

## MILITIA — continued.

when complainant not liable for costs,.....	116
no appeal unless forfeiture exceeds ten dollars, exclusive of costs,.....	116
complaints by other officers, how prosecuted,...	116
imprisonment on execution not to exceed six days,.....	116
judgment debtor to remain liable, and execution may be sued out against property,.....	118
money collected for fines, how disposed of,.....	117

## 14. COURTS MARTIAL.

complaints, on which courts martial are ordered, to specify offence, be signed, &c.,.....	117
no officer to be tried for offence committed more than a year before complaint,.....	117
nor on charge preferred by soldier, except, &c.,.....	117
respondent to be arrested, to have copy of charges, and notice, ten days before trial,.....	117
courts may be adjourned,.....	117, 118
of whom to consist, and when held,.....	117
only one general and one division court martial in one division in one year,.....	117
general, by whom appointed, and to try whom,.....	117
division, by whom appointed, and to try whom,.....	117
members of, how and by whom detailed,.....	117
provision in case officer detailed is unable to serve,.....	117
no officer superior in rank to the president to be detailed,.....	117
officers ordered to detail members of, to make return, &c.,.....	117
officers on, to rank by seniority of commission,.....	117
judge-advocate of each division to attend general and division courts martial,.....	117
if unable to attend, another to be appointed,.....	117, 118
if not present at opening of court, president may appoint,.....	118
such advocate to finish trial commenced,.....	118
if president does not attend, officer highest in rank to preside,.....	118
if marshal is not present at opening of court, president may appoint,.....	118
members to be sworn,.....	118
oath of president, members, and judge-advocate,....	118
challenges, how and when made, &c.,.....	118
certain causes of, when to be considered as waived,.....	118
if accused neglect to appear, &c., trial may proceed, &c.,.....	118
witnesses summoned, &c., must appear, &c., under same penalties as in criminal cases,.....	118
oath of,.....	118
evidence of default in returns,.....	119
copies of documents, how authenticated,.....	119
all proceedings, evidence, &c., to be submitted to the court in writing,.....	119
votes, how to be taken; two thirds required to convict,.....	119
sentence,.....	119
order to be preserved in court,.....	119
records of trial, &c., certified by judge-advocate, to be transmitted to officer ordering court,.....	119

## MILITIA — continued.

and by him transmitted, with approval of adjutant-general,.....	
pay roll to be transmitted to same office	
copies of records to be furnished general,.....	
judgment may be reversed by ex chief,.....	
commissioned officers, for what offences by court martial,.....	
fines imposed, to be prosecuted by courts,.....	
costs against judge-advocate, in sum paid,.....	

## 15. BOARDS OF OFFICERS.

may be called to settle military questions

## 16. GENERAL AND DIVISION COURTS

courts, of whom to consist, how organized,.....	
vacancies, &c., how filled,.....	
oath of president, members, and judge witnesses summoned, sworn, &c., martial,.....	
judge-advocate to attend, &c.,.....	
proceedings to be recorded and transmitted to courts martial,.....	
no guard unless necessary for protection	

## 17. RULES AND ARTICLES FOR GOVERNMENT IN ACTUAL SERVICE.

## MILK.

inspectors of, how appointed,.....	
to be sworn and give public notification,.....	
to keep an office and books for record of persons who sell milk,....	
may enter stores, &c., and analyze to prosecute violations of these provisions compensation of,.....	
measures, cans, &c., used in sale of, the wine measure,.....	
capacity of can to be marked by sealer, penalty for neglect to record name inspector's books,.....	
for neglect to place name on can conveyance of,.....	
for buying or selling, by other measures, &c.,.....	
for adulterating, &c.,.....	
for offering for sale when produced on deleterious food,....	

## MILL DAMS. (See Dams, Mills.)

## MILLERS.

duties and compensation of,.....	
to keep scales, &c., and weigh grain required,.....	
penalty for neglect or refusal so to toll for grinding grain, not to exceed thereof,.....	

## MILL POND.

penalty for wilfully drawing water from MILL PRIVILEGES.

may be divided among tenants in suits in equity, or on petition,.....	
---	--

## MILLS.

I. ERECTION AND REGULATION of dams to raise water for which may be erected, &c., on navigable,.....	
---	--

**MILLS — continued.**

shall not be erected to injury of lawfully existing mill on same stream,.....	754
of any mill site ever lawfully occupied as such, unless the right be lost, &c.,.....	754
shall not be placed on land of any one, without grant, &c.,.....	755
now lawfully existing, not affected by statute, except as expressly provided,.....	757
punishment for wilful injury to wheels, gear, or machinery of,.....	804
how execution may be levied on, when not divisible,.....	517, 518
height of water, and time of flowing others' lands, liable to regulation by a jury,.....	755
action for damages caused by erection of, &c., not to be sustained at common law, except, &c.,.....	757
owner of land flowed by, may make complaint to superior court to obtain compensation,.....	755
separate and joint owners may join in complaint, and have separate damages,.....	758, 759
contents of such complaint, when to be filed, and what notice thereof shall be given to mill owner,.....	755
by whom notice may be served,.....	755
such complaint not abated by death of either party,.....	759
respondent may tender, in court, past damages, and offer yearly compensation for the future; with what effect on costs, if complainant do not accept,.....	758
if complainant accept sum tendered, he shall have judgment therefor; and with what effect,.....	758
complainant may accept past damages, and proceed to trial for the future; and vice versa,.....	758
what may be answered in bar of such complaint,.....	755
respondent shall not answer that the land is not injured by mill dam,.....	755
other pleadings, and trial on such complaint, to be as in actions at common law,.....	755
if the complaint be supported, &c., court shall issue warrant for a jury to determine matter thereof,.....	755
either party may appeal to supreme court from decision on answer in bar,.....	755
if supreme court decide for complainant, case shall be remitted, and superior court shall issue warrant for jury,.....	755
proceedings on such warrant to be like those on complaint for damages caused by laying out, &c., highways,.....	755
trial may be in court before the jury, as in other civil actions, if parties agree in writing,.....	755
in such case, either party may have a view,.....	755
jury to consider damage to complainant's land not flowed, as well as to that flowed,.....	755
to allow, by way of set-off, benefit caused to complainant by the dam,.....	755
may return verdict that complainant is entitled to no damages,.....	755
such verdict of, not a bar to new complaint for subsequent damages,.....	758
to assess damages for three years only prior to complaint filed, and to the time of verdict,.....	755

**MILLS — continued.**

when shall decide how high, and for what periods, dam may be kept up,.....	755
shall assess yearly damages, and also a sum in gross,.....	755
complainant may elect, within three months, to take sum in gross,.....	755
shall enter such election on the record in the clerk's office,.....	755
mill owner shall, within three months after such entry, pay or secure such sum, &c., or lose benefits of statute till he pay,.....	755
complainant, and his assignees, (if he do not elect to take gross sum,) entitled to receive yearly damages from all future owners, &c., of mill,.....	755
damages and gross sum a lien on mill, &c., for three years,.....	755, 757
may be recovered by action of contract,.....	757
what may be recovered,.....	757
full costs, although amount recovered is less than twenty dollars,.....	757
execution on judgment for damages, &c., may be levied on mill, &c., and the premises sold like an equity of redemption,.....	757
may be redeemed within one year, on payment of sum paid, and twelve per cent. interest,.....	757
such sale of, how far valid against assignees of mill owner,.....	757
verdict for damages, &c., subject to control of court, like verdicts in common law trials,.....	757
may be set aside, and new trial ordered,.....	757
if complaint be abated, or judgment on verdict be reversed, new complaint for same cause may be brought within one year,.....	759
either party, or his assignees, may apply, and within what time, for a new assessment of damages, &c.,.....	757, 759
provisions for an offer of increased compensation, or to accept a smaller, and the effect there-	

# INDEX.

## MILLS — continued.

provision for apportioning expenses of repairs, &c., on tenants and reversioners, &c.,	760, 761
for lien on rents, &c., after reversioner comes into possession,	760, 761
tenant in tail, and mortgagee in possession, regarded as proprietors, for above purposes,	761
mortgagor liable for what is not recovered of mortgagee,	761
sums paid for repairs by mortgagee, to be allowed by mortgagor,	761
sums due from one proprietor to another for advances, may be recovered by an action of contract, or by bill in equity,	761
such bill in equity may be brought in supreme court,	761
court to apportion amount recovered among the plaintiffs according to their respective rights,	761
foregoing provisions not to affect agreements respecting repairs, &c.,	761
how execution may be levied on, when not divisible,	617, 618
punishment for wilful, &c., injury to,	804
for flowing water back on,	804
<b>MINISTERS OF THE GOSPEL.</b>	
exempted from military duty,	98
from liability to watch,	174
from service as jurors,	680
when, together with deacons, &c., to be a corporation to take grants to their churches,	206
may take in succession any parsonage land, &c.,	206
may prosecute and defend actions relating to such land,	206
conveyance by, of land held in succession, valid only for time of ministry, unless, &c.,	206
limitation of entry by successor, after disincorporation of,	776
to endeavor that youth regularly attend school,	217
settlement of, in towns, how acquired,	391
powers and duties of, as to solemnizing marriages, &c.,	530
penalties on, for violating provision respecting solemnizing marriages,	530
fees of, for solemnizing, &c., marriages,	787
may visit prisoners, as prisoners desire,	868
may be present at execution of criminal, if, &c.,	847
<b>MINORS.</b>	
when executors, how administration of estate to be conducted,	482
property held by, in trust, may be sold and conveyed, in certain cases,	602
sale of real estate of, by guardians, for payment of debts,	612
for maintenance and investment,	613
residing out of state, sale of real estate of,	613, 614
certificate of intention of marriage not to be issued to, except on application of parents, &c.,	629
unless there is no parent or guardian in this state,	629
marriage of, not to be solemnized without consent of parents, &c.,	630
guardians of, how nominated and appointed,	643
may be appointed by will of father,	643
to have custody and tuition of, and care of estate, &c.,	643
to continue in office until ward is twenty-one years of age,	643

## MINORS — continued.

father, or mother of, if competent to do of person, and care &c.,	
property of, whose father is living, will be applied to his support,	
real estate of, may be sold by guardian under license,	
may be bound as apprentices, or as whom,	
power of mother to bind her child upon subsequent marriage, may be exercised by herself, &c.,	
when bound by parent or guardian, is to be expressed, &c.,	
when may be bound by overseers of the poor, not to be bound, except by indenture,	
one part of indenture to be kept for, money, &c., allowed by master, to,	
duties of parents, &c., in relation to prenticed,	
complaint for misconduct of, or of heard and determined,	
may be discharged from apprenticeship court,	
when discharged, may be apprenticed costs in such cases, how awarded,	
damages recovered in action against master, property of,	
action against master, by whom brought, not bound after master's death,	
absconding, may be arrested and reprimanded,	
proceedings in such case, and costs, recoverable,	
jurisdiction of appointment of guardian, settlement of estate of, given by court,	
may recognize as witnesses,	
other persons may recognize for,	
<b>MINOR'S LEDGE.</b>	
ceded to United States,	
<b>MISCARRIAGE.</b>	
unlawful procuring or attempting to be punished,	
punishment for aiding and assisting, advertising means for procuring,	
<b>MISCHIEVOUS, &amp;c.</b>	
taking, &c., of another's property, by intent to steal, how punished,	
injury to property, how punished,	
<b>MISPRISION OF TREASON.</b>	
how defined and punished,	
<b>MISTAKE.</b>	
fraud, and accident, suits in cases brought in supreme judicial equity,	
<b>MISTRESS.</b>	
provisions relating to masters of ships, apply to,	
<b>MODERATOR.</b>	
of town meetings, to be chosen, judicial, state, district, and county,	
to be chosen by written ballot,	
in choice of, town clerk, &c., to preside and duty of moderator,	
powers and duties of,	

**MODERATOR — continued.**

to receive votes of all persons on voting lists,.....	58
not answerable for refusing, when name not on list,.....	58
penalty on, for examining names on ballot before poll is closed,.....	160
may administer oaths, in open meeting, to officers then chosen,.....	160
shall poll voters, &c., if seven voters question his declaration of any vote, unless, &c.,.....	160
no person to speak without leave of,.....	160
may order disorderly person to withdraw, after notice,.....	160
and may order such persons, upon refusal to withdraw, to be confined, &c.,.....	160
penalty on person refusing to withdraw,.....	160
of meetings in watch districts, to be chosen, with powers of moderator of town meeting,.....	174
of meetings in fire districts, to be chosen, with powers of moderator of town meeting,.....	180
of meetings of proprietors of wharves, and real estate lying in common, powers, &c.,.....	380

**MONAMOY POINT.**

in Barnstable county, land on, ceded to United States,.....	44
---	----

**MONEY.**

Congress may coin, and regulate value of, &c.,.....	4
to be paid from state treasury only on governor's warrant, except, &c.,.....	24
sums of, how computed,.....	80
at interest, more than owner pays interest for, taxable,.....	74
of account, to be dollar, cent, and mill, and accounts in public offices, &c., to be kept accordingly,.....	292
charges, &c., otherwise made, not vitiated, but to be reduced to dollars, &c.,.....	292
Interest of, to be at the rate of six per cent. a year,.....	292
when more than six per cent. is reserved, contract not void, but threefold unlawful interest forfeited,.....	292
defendant to recover full costs, in action on such contract,.....	292
if more than six per cent. is paid, threefold unlawful interest may be recovered back,.....	292
action for such recovery, to be brought within two years,.....	292

**MONTH.**

how construed,.....	51
---------------------	----

**MONUMENTS.**

to be erected at every angle of lines between contiguous towns, at joint expense of towns,.....	158
at angles, &c., of highways, when laid out, &c.,.....	244
punishment for wilful, &c., removal of,.....	808

**MORTGAGES OF REAL ESTATE.**

suits concerning conveyances in the nature of mortgage may be brought in supreme court in equity,.....	559
to the commonwealth, money due on, may be demanded and received by treasurer, who may give discharge,.....	717
may be foreclosed, or redeemed, as other mortgages,.....	717
treasurer may make entry, or bring action to foreclose,.....	717
suit for redemption to be brought in the supreme court, in Suffolk county, see	

**MORTGAGES OF REAL ESTATE — continued.**

vice how made, and other proceedings therein,.....	717
tenancy in common not created by,.....	467
separate deed, &c., of defeasance, when construed to be a mortgage,.....	716
to be recorded, or not to defeat absolute conveyance, except, &c.,.....	467
notice of, to be given by grantor in subsequent conveyance, before consideration is paid, &c.,.....	467
grantor liable in damages for neglect in such case,.....	467
not defeated by subsequent rights of homestead,.....	525
held by banks, may be attached and taken on execution,.....	308
held by insurance company, may be attached or taken on execution,.....	322
lands mortgaged, &c., how seized in such cases,.....	308
damages to real estate, subject to mortgage, how assessed when taken for railroad,.....	353
may be discharged by entry on margin of record, &c., signed by mortgagee, &c.,.....	468
such entry to have effect of deed of release, &c.,.....	468
liability of mortgagee for refusing to discharge,.....	468
in hands of executors, &c., to be considered personal assets,.....	459
if such mortgage is redeemed, executors, &c., to release, meantime to hold in trust,.....	490
mortgagee, not in possession, may pay taxes in certain cases,.....	86
in possession, liable to pay taxes in certain cases,.....	86
entitled to deed from purchaser at sale for non-payment of taxes, upon tender, &c.,.....	86
entitled to receipt for payment of taxes, and may add sum paid to mortgage,.....	86
such receipt recorded in registry of deeds to be notice of payment, &c.,.....	86
liability of, for refusing to discharge mortgage on request, &c.,.....	468
mortgagee of an undivided interest concluded by partition among owners,.....	702
real action founded on mortgage to allege seisin to be in mortgage,.....	654

**FORECLOSURE OF.**

mortgagee or his assigns, after condition broken, may obtain possession by peaceable entry, or by action,.....	712
an entry may be made, or action brought, by an assignee of the mortgage, whether such assignment is by deed, or by operation of law,.....	712
such possession obtained in either way, and continued three years, shall forever foreclose the right of redemption,.....	712
certificate of peaceable entry to be made on deed by mortgagor, or, by affidavit of two witnesses, and recorded in registry of deeds,.....	712
not effectual unless such certificate is recorded within thirty days,.....	712
writ of entry to foreclose, may be brought in supreme or superior court,.....	558, 562
action may be brought against tenant of freehold, and mortgagor may always be joined,.....	712
mortgagor not liable for costs, if he has no interest and makes no defence,.....	712

# INDEX.

## MORTGAGES OF REAL ESTATE — continued.

plaintiff to declare on his own seisin in mortgage,.....	664, 712
if it appears that plaintiff is entitled to possession for breach of condition of mortgage, conditional judgment shall be entered on motion of either party,.....	712
if defendant is neither mortgagor, nor entitled to hold under him, conditional judgment not to be rendered,.....	712
judgment in all cases may be for possession as at common law, unless conditional judgment is moved for,.....	712
when conditional judgment is to be entered, court shall inquire and determine how much is due plaintiff,.....	712
such judgment to be, that if defendant within two months pays to plaintiff sum so found due, with interest and costs, mortgage to be void, and defendant to hold premises; otherwise that plaintiff have execution for possession,.....	712
if condition of mortgage is for doing something other than payment of money, or if part only is due, judgment to be varied accordingly,.....	712
mortgagee, or person claiming under him, may recover possession by entry or action, before condition broken, when no agreement to contrary,.....	718
in such case, if the debt is paid afterwards, or the mortgage redeemed, rents and profits to be accounted for,.....	718
when entry is so made, the three years for foreclosure not to begin to run until after condition is broken, and certain written notice given to mortgagor or person claiming under him,.....	718
after such entry, mortgagee may make a new entry or bring an action, notwithstanding he has possession,.....	718
certificates of such notice, and of such new entry, to be made and recorded in like manner as in case of an original entry,.....	718
foreclosure may be opened if mortgagee afterwards recovers judgment for part of his debt by reason of value of premises being less than sum due him,.....	715
suit to open foreclosure to be brought within one year after such judgment,.....	716
mortgagee in possession, when liable to pay taxes,.....	85

## REDEMPTION.

suits for, may be brought in supreme or superior courts,.....	714
if brought in superior court, an appeal may be had, as in other cases,.....	714
when bill in equity is inserted in writ, what shall be deemed commencement of suit,.....	714
mortgagor, his heirs, devisees, executors, or administrators, after condition broken, may redeem if redemption is not foreclosed by three years' possession,.....	718, 715
may redeem after such possession and foreclosure opened, if mortgagee afterwards recovers judgment for part of debt on account of value of premises being less than sum due on debt,.....	715
in such case, suit for redemption to be brought within one year after such judgment,.....	716

## MORTGAGES OF REAL ESTATE — c

assignees of insolvent corporations sixty days after their appointment, deem mortgages foreclosed, and be appointed,.....	
if mortgagee, or person claiming under possession, he shall account profits, and be allowed for expenses in repairs, &c.,.....	
on such account, balance found due, how paid,.....	
person entitled to redeem to pay, or tender or perform other condition, if suit is brought,.....	
tender and payment may be made and he may execute a person entitled thereto is unshipped,.....	
may be made by executors, administrators, devisees,.....	
tender may be made at any time be entry, and within the three for redemption,.....	
if tender is not accepted, mortgagor, or person claiming under him, may recover suit in equity,.....	
if not accepted, foreclosure not prevent suit for redemption is commenced one year after tender,.....	
if in such suit plaintiff alleges that he or offered to pay sum due, amount to clerk for party entry,.....	
suit may be brought by executors, administrators, devisees, upon tender ceased,.....	
plaintiff entitled to redeem on certain though a previous tender client,.....	
right of redemption may be taken tion,.....	
proceedings in levy of execution on right may be redeemed by debtor who &c.,.....	
may be sold on execution, &c.,.....	
liability of mortgagee, &c., for refusing mortgage after performance on request,.....	
persons entitled to redeem may, within for redemption, bring a suit without previous tender,.....	
may therein offer to pay the sum found due, or to perform other of mortgage,.....	
court, after commencement of suit in vacation, may determine what dispute is due, and order its mortgagee or clerk,.....	
new parties appearing, during pendency, be interested, may be summoned made parties to proceedings,.....	
suits may be commenced and prosecuted by executors, administrators, devisees,.....	
Decree of redemption, if plaintiff is redeem, court shall determine or what other acts are to be entered a decree that upon performing such acts, within time, plaintiff shall hold the premises charged of mortgage,.....	

**MORTGAGES OF REAL ESTATE—continued.**

- if mortgagee has not unreasonably neglected to render an account, court may also allow him twelve per cent. interest from expiration of the three years after entry, ..... 714
- if plaintiff refuses or neglects to accept the money or other thing according to decree, money may be left with clerk, and after performing terms of decree, execution for possession may issue, ..... 714, 715
- if defendant has received, from rents and profits or otherwise, more than is due on mortgage, judgment and execution may be awarded against him for the balance, ..... 715
- in such case, if there are several defendants, judgment and execution may be awarded against them jointly or severally, . . . 715
- if money tendered and brought into court exceeds amount due on mortgage, or if any amount is awarded to plaintiff for rents and profits or costs, how same to be paid, ..... 715
- if mortgagee, or person claiming under him, receives more than is due on mortgage, and no suit for redemption is brought, balance may be recovered back in an action of contract, ..... 715
- if after levy of execution on judgment for possession, the amount due and the costs are paid, discharge to be entered on record or release given, ..... 715
- when mortgage is redeemed after an attachment, and before judgment on the original writ, attachment not affected, ..... 625

**By RAILROAD CORPORATIONS.**

- how road and franchise may be mortgaged, .... 365, 366
- trustees and bondholders under, meetings of, ..... 366
- how made to commonwealth to secure loan, &c., ..... 367
- (See Railroads.)

**MORTGAGES WITH POWER OF SALE.**

- when conditional judgment is entered on suit to foreclose, a decree of sale may be entered instead of execution issuing, ..... 716
- all parties interested in equity of redemption, including married women who may have dower, to be notified, . . . 716
- notices to be given and other acts done according to the power, and the order of court, ..... 716
- party selling shall, within ten days, make report thereof on oath to the court, and file same in clerk's office, ..... 716
- court may confirm sale or set it aside, and order a resale, ..... 716
- any person interested may intervene, or be summoned, and be heard, ..... 716
- order of court confirming sale to be conclusive, ..... 716
- instead of suit, mortgagee, or person claiming under him, may give the notice and do all acts authorized by the power, ..... 716
- within thirty days after such sale, affidavit of facts, with copy of notice, to be recorded in registry of deeds, ..... 716
- affidavit or office copy may be admitted as evidence, ..... 716
- such sales to bar married women who in mortgage released dower, whose husbands executed the same before marriage, ..... 716, 717

**MORTGAGES OF REAL ESTATE—continued.**

- power of attorney in the mortgage not impaired or annulled by a sale of the property by mortgagor, ..... 716

**MORTGAGES OF PERSONAL PROPERTY.**

- not valid except between the parties, unless it is recorded, or mortgagee takes and keeps possession, .... 766, 767
- to be recorded where mortgagor resides at date of mortgage, and where he then principally transacts his business, ..... 766
- if mortgagor resides out of state, to be recorded where property is, .... 766
- mortgages, transfers, &c., of vessels, need not be recorded, ..... 767
- contracts of bottomry, &c., and transfers, &c., of ships or goods at sea need not be recorded, ..... 767
- mortgages of goods at sea need not be recorded if mortgagee takes possession on their arrival in this state, ..... 767
- city and town clerks' duty, as to such mortgages, and their fees therefor, ..... 767
- to be considered as recorded when left in clerk's office for that purpose, ..... 767
- when mortgaged property is redeemable, and by whom, ..... 767
- proceedings for its redemption and recovery, ..... 767
- mortgages may replevy, if property is not restored on tendering the sum due and charges, ..... 767
- notice of foreclosure by mortgagee or assignee, how given, . . . 767
- notice, with the affidavit of service, to be recorded where mortgage is recorded, ..... 767
- the originals, or a copy of the record, to be evidence of giving such notice, ..... 767
- right to redeem foreclosed if money is not paid, &c., in sixty days after notice, .. 767
- property held by, how attached, and proceedings thereon, ..... 625, 626
- how attached, and mortgagee summoned as trustee

how  
fraudulent

mort

mortgage

**MOTHER.**

- when to be  
illegitimate  
when hei  
may bind

**MOTIONS.**

- to dismiss

for new

**MULES.**

- where tax  
less the

found goi

**MURDER.**

- in first de  
in second  
degree to



**MURDER — continued.**

forms of indictment not to be changed,.....	791
distinction between, and petit treason abolished,....	791
body of person executed for, may be dissected, unless, &c.,.....	791
to whom to be delivered for that purpose,.....	791
by fighting duels,.....	791, 792
punishment for assault with intent to commit,.....	793
attempts to commit,.....	793, 794
indictment for, may be found at any period,.....	839
<b>MUSICIANS.</b> ( <i>See Militia.</i> )	
bands of, how enlisted, &c.,.....	95

**MUSTER.**

military, and other public gatherings, penalty for gaming at,.....	437
booths used for gaming, illegal sale of liquors, within one mile of, how removed, &c.,.....	454
<b>MUTUAL ACCOUNTS.</b>	
how adjusted in insolvency proceedings,.....	584, 587
how, in trustee process,.....	723, 724
how may be set off in actions,.....	669-671
limitations in action on,.....	777, 778
<b>MUTUAL INSURANCE COMPANIES.</b>	
provisions respecting,.....	324-329

**N.****NAILS.**

wrought and cast, and brads, how made and packed,.....	275
to be packed free from waste iron,.....	275
casks for, quality, and how branded,.....	275
forfeited, if offered for sale or shipped, &c., without branding,.....	275
penalty for mixing refuse with,.....	275
for counterfeiting brand,.....	275
for shifting contents of casks after branding,.....	275
for shipping out of state casks of, not branded,.....	275

**NAMES.**

of others not to be used in business without their written consent,.....	298
illegal use of, restrained by supreme court,.....	298
Change of, applications for, to be heard and determined by probate court,.....	548
not to be made, unless for reasons satisfactory to court,.....	548
except in case of divorce, &c.,.....	533, 548
notice of application for, to be given before decree,.....	548
of decree of, to be given,.....	548
on return of proof of, certificate of name to be given by court,.....	548
of child adopted, may be decreed at time of adoption, without notice, &c.,.....	548
returns of, to be made annually by judges to secretary,.....	549
to be published, in tabular form, with acts and resolves,.....	50, 549
women divorced may resume their former names,.....	533

**NANTUCKET.**

lighthouse, &c., on, ceded to United States,.....	44
land in, ceded to United States,.....	45
selectmen of, to act as county commissioners,.....	148
may raise money for county expenses,.....	148
town treasurer of, to be county treasurer,.....	149
certain provisions respecting fencing unenclosed land not to apply to,.....	184
regulations concerning shell fish in,.....	438
County of, jurors in, liable to be drawn and serve once in two years,.....	680
attachments in, on writs returnable elsewhere, or in other counties on writs returnable therein, to continue sixty days after judgment,.....	625

**NASHUA ISLAND.**

land in, for lighthouse, ceded to United States,.....	44
---	----

**NATURALIZATION.**

congress may establish uniform rule of,.....	4
--	---

**NATURALIZATION — continued.**

supreme and superior court alone have jurisdiction of application for,.....	618
clerks of no other courts in this state to act in such cases,.....	618
proceedings for, to be in open court, and to be entered of record,.....	618
penalty on clerks for filing papers or acting in cases of naturalization except as provided by law of this state,.....	618
Naturalized citizens not entitled to vote, nor eligible to office, until after two years' residence, &c.,.....	39
proof of naturalization to be required by selectmen, &c., before putting name on list of voters,.....	57

**NAVY.**

power of congress to establish,.....	4
--------------------------------------	---

**NAVY YARD.**

land for, in Charlestown, ceded to United States,....	44
---	----

**NEAT CATTLE.**

when taxable,.....	76
less than a year old, exempted from taxation,.....	76
to be impounded for being at large contrary to law, &c.,.....	185, 186
( <i>See Animals, Beasts.</i> )	

**NEGROES.**

punishment for selling the service or labor of, when kidnapped,.....	794
--	-----

**NETS.**

of fishermen, when exempt from levy on execution and attachment,.....	624, 638
---	----------

**NEW BEDFORD.**

land in, ceded to United States,.....	44, 45
Palmer's Island in harbor of, ceded to United States,.....	45
Egg Island Shoal in harbor of, ceded to United States,.....	45
penalty for boarding vessels in harbor of, without leave, except by pilot, &c.,.....	290
what to be deemed limits of harbor of, for certain purposes,.....	290
penalty for taking fish within harbor, &c., of, by persons living out of state,.....	481

**NEWBURY.**

land in, for breakwater, ceded to United States,.....	44
---	----

**NEXT FRIEND, (*see Guardian.*)**

.....	543
-------	-----

**NEXT OF KIN.**

what to inherit,.....	474, 485
-----------------------	----------

**NEW TRIAL.**

In civil cases, may be granted by supreme and superior courts at any time <del>and</del> judgment,.....	593
---	-----

**NEW TRIAL**—*continued.*

- may be had in cases where trial by jury is  
waived, as in other cases, ..... 681
- when motion for, is overruled, court may enter  
judgment as of term when verdict was  
rendered,..... 685
- In criminal cases, how may be granted within one  
year, ..... 843
- when ordered, where may be had, ..... 844

**NID'S POINT.**

- land at, ceded to United States, ..... 45

**NIX'S MATE.**

- ceded to United States, ..... 45

**NIGHT TIME.**

- what shall be deemed, as regards commission of  
offences, ..... 841

**NIGHT WALKERS.**

- common, how arrested, secured, and punished, ..820, 821
- imprisoned, how discharged as reformed, or bound  
out, ..... 859

**NOBILITY.**

- titles of, not to be granted by Congress, ..... 5

**NOBSQUE POINT.**

- land on, ceded to United States, ..... 44

**NON COMPOS.**

- included in words "insane" and "lunatic," ..... 51

**NON JOINDER OF DEFENDANTS.**

- by reason of cause of action barred by limitation,  
not to abate action, ..... 779
- amendment may be made introducing new de-  
fendants, ..... 508, 557, 658, 759

**NONSUIT.**

- of executor or administrator on being cited, &c., in  
suits commenced by deceased, effect of,  
and liability for costs, ..... 649
- may be entered on motion of court, when local ac-  
tion is brought in wrong venue, ..... 651
- may be entered when a party refuses to answer in-  
terrogatories, or to amend or expunge the  
same, ..... 660
- costs on, must be paid, or second suit for same cause  
to be stayed or dismissed, ..... 781
- defendant not to have, when caused by his in-  
solvency, ..... 780

**NON TENURE.**

- may be pleaded in abatement or in bar, ..... 698

**NORTH CHELSEA.**

- to vote with Middlesex county for county commis-  
sioners, ..... 71, 72
- returns of votes in, for county commissioners and  
register of deeds, to whom made, ..... 59
- county commissioners of Middlesex to have jurisdic-  
tion in, ..... 148, 242
- not to be taxed for county purposes, ..... 73
- to have no interest in county property, ..... 144

**NORTH ROCKS, &c., IN MERRIMACK  
RIVER.**

- ceded to United States, ..... 44

**NOTARIES PUBLIC.**

- appointment, removal, and tenure of office of, ..... 82
- may administer oaths, ..... 181
- fee of, ..... 787
- upon death, resignation, &c., records, &c., to be de-  
posited in clerk's office, ..... 181
- clerks to take charge of records, &c., of, and make  
and certify copies thereof, ..... 181
- penalty on, and on executors, &c., of, for neglect to  
deposit, &c., ..... 181
- penalty for destroying records, &c., of, ..... 181
- in other states and countries may take acknowl-  
edgments of deeds of land in this  
state, ..... 457

# INDEX.

## NUISANCES—continued.

- expense of abating, to be collected by officer as damages and costs are collected on execution,..... 711
- when buildings and other things are removed as nuisances, they may be sold as on execution, and proceeds applied to pay charges of removal,..... 711
- after commencement of suit in equity concerning a nuisance, supreme court, or any justice thereof, in term time or vacation, may issue an injunction to prevent or stay waste,..... 711

## NUISANCES—continued.

- when an action of tort for a nuisance :  
supreme or superior court, ( :  
any justice thereof, may in :  
issue such injunction,.....  
such injunctions may be dissolved by :  
same, or any justices thereof, :  
or vacation,.....
- NUNCUPATIVE WILL.**  
when may be made by soldiers and mar :  
**NUTS.**  
to be sold by dry measure, under penalt :

# O.

## OATH.

- to include "affirmations," where they may by law be substituted for oaths,..... 51
- may be administered by senators and representatives, as members of committees,..... 49
- commissioners to take, &c., in other states and countries,..... 122
- usual mode of administering, heretofore practised, to be observed,..... 673
- how administered to persons not believing in the existence of God,..... 673
- affirmations may be substituted for, in case of Quakers and persons having conscientious scruples, &c.,..... 673
- may be administered in all cases by justices of the peace, except where different provision is made,..... 610
- Of office, form of,..... 29, 33
- of public officers, how administered,..... 131, 132
- Of attorneys at law, on admission to practice,.... 616
- Of jurors in civil and criminal cases,..... 632, 841
- Of grand jurors,..... 837
- For relief of poor debtor, form of,..... 637
- Judges and registers, and assistant registers of probate and insolvency,..... 601-603
- In insolvency proceedings, may be administered by judge, and in certain cases by register,..... 581
- to be taken by insolvent debtors, &c., at second meeting of creditors,..... 580, 598
- when may be taken by debtor subsequently,..... 592
- required on proof of claims against insolvent debtors,..... 584, 585
- may be taken before justices of the peace,..... 586
- In probate proceedings, of accountants, may be administered by judge out of court, or by a justice of the peace by him authorised, &c.,..... 576, 577
- in all other cases, may be administered by the register or a justice of the peace,..... 577

## OATS.

- standard weight of bushel of,..... 265

## OBSCENE BOOKS AND PRINTS, &c.

- punishment for importing, printing, selling, receiving, having in possession, &c.,..... 819
- search warrant may issue for,..... 819, 830
- to be kept as evidence, and then destroyed,..... 819
- prosecutor to conviction to have half the fine,..... 819

## OFFENCES.

- to be prosecuted by indictment, except, &c.,..... 790
- punishment of, how stayed by reparation of injured party,..... 834-839

## OFFENCES—continued.

- persons to be held to answer for, upon in :  
upon information authorised by sta :  
by police courts and justices of the :  
by courts martial,.....
- not to be convicted of, except by v :  
&c.,.....
- not to be punished for, unless di :  
ed,.....
- former conviction or acquittal of,.....
- concealing and compounding, how puni :  
Against the sovereignty of the :  
wealth,.....
- Against the person,.....
- Against property,.....
- Of forgery and against the currency :  
Against public justice,.....
- Against the public peace,.....
- Against chastity, morality, and dece :  
Against the public health,.....
- Against public policy,.....

## OFFENSIVE TRADES.

- places for exercise of, how assigned,.....
- assignment of places to be recorded,.....
- when places assigned for, become :  
assignment may be revoked :  
court,.....
- person damaged in comfort by, m :  
damages,.....
- exercise of, may be forbidden,.....
- orders therefor, how served on occupant, :  
penalty for disobeying such order,.....
- appeal to superior court, and trial by jur :  
to be suspended, pending appeal,.....
- form, return, and effect of verdict,.....
- costs in such cases,.....

## OFFER OF JUDGMENT.

- how may be made by defendants in suits :  
in equity,.....
- to be accepted within ten days after no :  
further time is allowed by cou :  
if not accepted, or plaintiff does not re :  
damages and costs, how rec :  
execution issued,.....
- not to be evidence in any other suit, nor :  
sequent proceeding in same ac :

## OFFICE.

- right of people to secure rotation in,....
- person fighting duel, or sending or accep :  
lange, or promoting a duel, i :  
holding, &c.,.....
- forfeited by conviction, and sentence :  
prison,.....

**OFFICE—continued.**

reversal of conviction by writ of error, to cause restoration to,.....	846
pardon not to work such restoration, unless so expressed therein,.....	846
tenure of, by commission, to be expressed therein,.....	27
judicial, except of justices of the peace, to be held during good behavior,.....	17, 27
incompatibility of,.....	80, 83, 49, 149, 742
public offices to be closed on certain holidays,.....	49

**OFFICERS.**

of United States, not to receive presents, titles, &c.,.....	5
public, accountable to the people,.....	14
to submit to speaker of house of representatives estimates of expenditures required for their department,.....	189
disbursing money, to make annual report to auditor,.....	189
duties of, in making purchases and incurring liabilities of state,.....	140
travelling expenses of certain, not to exceed three and a half cents a mile,.....	141
salaries of, when and how payable,.....	140
receiving fees, costs, &c., to make return, annually, to secretary, under oath,.....	128, 129
penalty for neglect to make such returns, ..	129
of civil government, list of, to be published with acts and resolves, ..	50
not to be disqualified from acting by reason of being an inhabitant of any town interested in suit,.....	618
liability of, for escape of debtor arrested, &c., on execution,....	641
must state true reason of arrest to person arrested, ..	789
must exhibit precept on request,.....	789
penalty for false answer, or refusal to answer, or to exhibit precept,.....	789
arresting on pretended process, &c., how punished, ..	790
public, falsely accusing person of an offence, that he may be held as a fugitive slave, to be disqualified,.....	798, 1
receiving fees, to furnish specific account to person paying, ..	1
penalty for neglect,.....	1
serving writs, to indorse fees thereon,.....	1
not to purchase or have any interest in certificates of witnesses in criminal cases,.....	1
rescuing prisoner from, how punished,.....	2
voluntarily suffering prisoner to escape, how punished,.....	2
negligently suffering prisoner to escape, how punished,.....	2
refusing to receive prisoner, how punished,.....	2
refusing to arrest prisoner, how punished,.....	2
refusing to assist, how punished,.....	2
falsely assuming to be, how punished,.....	2
those disguised to hinder, how punished,.....	2
taking rewards for omitting duty, how punished,.....	2
recording officer, extortion by, how punished,.....	2
of state prison, of whom to consist, and salaries of,....	2
certain public, may commence or prosecute actions on contracts, &c., with predecessors,.....	6

**OFFICIAL INFORMATION.**

intended for the public, to be published in newspapers, by secretary,.....	
--	--

**OILS.**

what to be deemed pure winter-pressed, or summer-strained, spermaceti,.....	25
what to be deemed whale,.....	25
what to be deemed tight-pressed,.....	25
liability of seller of adulterated, under false name,.....	26, 27
unless mixture is disclosed to buyer,.....	26
vessels of less than five gallons in such case, to be labelled with proportion of mixture,.....	26
penalty for selling adulterated, as pure, without notice to buyer,.....	27
how and to whose use recovered,.....	27
test of, to be Harris's oleometer,.....	27

**OIL OF VITRIOL.**

wilful, &c., injury by, to houses, how punished,....	94
--	----

**ONIONS.**

standard weight of bushel of, to be fifty-two pounds,.....	27
mean weight, how to be ascertained,.....	27
penalty for selling without ascertaining weight, ..	27
when these provisions not to apply, ..	27

**OPERATIVES.**

wages of, in manufacturing establishments, how recovered of stockholders,.....	38
certain claims of, privileged debts when debtor is insolvent, ..	504, 506

**ORCHARDS.**

wilful and malicious injury to, how punished, ..	86
how, when committed on Lord's day,.....	86

**ORDERS.**

grace on, when payable in the state at a future day certain,.....	24
not, when payable on demand, ..	24
for payment of money, within this state, <i>damages</i> on, when protested,.....	24

**ORDINANCE.**

as applied to cities, to be synonymous with by-law, ..	2
--	---

**ORES.**

how to be assayed, &c.,.....	24
punishment for digging up, &c., without license,.....	93

**OVERSEERS, &c. — continued.**

pauper has settlement, and request his removal,.....	394
provisions concerning such notifications by, and service thereof,.....	394
may take effects of deceased paupers to reimburse expenses of support, &c.,.....	394
to prosecute and defend suits concerning paupers, in behalf of their towns,.....	394
to return, annually, to secretary of commonwealth, statement of paupers, &c.,.....	394
form and contents of such return,.....	395
penalty on, for not making return,.....	395
to perform duties of superintendents of alien passengers, where there is no superintendent,.....	400
may complain in bastardy case when woman refuses to complain,.....	404
may bind as apprentices children chargeable to their towns, &c.,.....	549
duty of, to inquire into treatment of children so bound,.....	550
<b>OVERSEERS OF HOUSES OF CORRECTION.</b> (See <i>Houses of Correction.</i> )	
powers and duties of,.....	858-868

**OWNERSHIP.**

of property, in whom it may be proved in prosecutions for offences relating to real or personal estate,.....	841
<b>OYSTERS.</b>	
penalty for unlawfully taking, from beds, &c.,.....	432
permits to take, may be granted by selectmen, &c.,.....	432
may be taken at certain seasons without permits, for family use,.....	432
vessels, boats, &c., having them illegally on board, may be seized,.....	432, 433
to be discharged if owner, &c., pay penalty before prosecution,.....	433
prohibitions concerning, not to extend to Indians,.....	433
licenses to plant and grow, may be granted by selectmen, &c.,.....	433
shall describe flats and creeks so appropriated, and be recorded by city or town clerk,.....	433
fees of mayor and aldermen, or selectmen, and clerk,.....	433
rights of persons licensed, and penalties for trespassing thereon,.....	433

**P.**

<b>PAGE.</b>	
the word defined,.....	788
<b>PAGES.</b>	
of senate and house of representatives,.....	138, 134
<b>PALMER'S ISLAND.</b>	
land on, ceded to United States,.....	45
<b>PAPER.</b>	
to be packed in reams, half reams, or quarter reams,.....	276
printing, may be packed in parcels of two reams,....	276
number of quires in ream, &c., and number of sheets in quire,.....	276
packages of, how to be marked,.....	276
penalty of selling, not packed and marked, according to law,.....	276
not packed or marked, to be forfeited,.....	276
<b>PAPERS.</b>	
secured in prosecution for perjury,.....	812
detained from the person producing them,.....	812
<b>PARDONS.</b>	
power of, in governor, by advice of council,.....	24
not to be granted before conviction,.....	24
to persons convicted by impeachment,.....	24
governor may grant, upon such conditions as he thinks proper,.....	855
terms of pardon must be specified in the warrant,.....	855
bond may be required for the performance of the terms of the pardon,.....	855
how taken, and where deposited,.....	855
if terms and conditions of pardon are not kept, convict must be arrested and detained,.....	855
time of conditional pardon not to be counted,.....	852
proceedings in such case,.....	855, 856
how the question whether condition is broken, to be tried,.....	856
officer to make return of warrant for pardon or commutation of punishment to secretary of state,.....	856

**PARDONS — continued.**

to file in clerk's office copy of warrant and return,.....	856
clerk to subjoin brief abstract thereof to record of conviction and sentence,.....	856
granted after divorce by reason of imprisonment not to restore party to conjugal rights,.....	532
not to cause restoration to office, unless so expressed therein,.....	846
<b>PARENTS.</b>	
not punishable as accessories after the fact of felony committed by children,.....	826
(See <i>Children.</i> )	
<b>PARISHES AND RELIGIOUS SOCIETIES.</b>	
established or organized by law, to continue bodies corporate,.....	200
actions by and against, where to be brought,....	621, 622
processes in suits against, how served,.....	622
powers of taxation given by special laws, &c., not affected,.....	200
to enjoy existing rights, &c., unless, &c.,.....	200
churches connected with, to have their accustomed privileges,.....	200
unincorporated, may organize as corporation if there are ten voters,.....	200
may hold real and personal estate,.....	200
may hold and manage donations, like incorporated societies,.....	202, 203
powers of, may be revoked by legislature,.....	200
first meeting of, how called,.....	200
contents of warrant, how served and returned, &c.,.....	200, 201
justice to preside till clerk is chosen,.....	201
may choose officers, &c.,.....	201
clerk to record proceedings of organization,.....	201
may grant money, and for what purposes,.....	202
money granted by, to be assessed on members like town taxes,.....	202

## PARISHES, &amp;c. — continued.

taxes in, to be assessed on property of members, wherever it is,.....	202
no citizen to be taxed for parochial purposes in, except where he is a member,.....	202
corporations, guardians, &c., not to be taxed for parochial purposes in,.....	202
may authorize abatement of taxes,.....	202
may appoint trustees to hold trust funds,.....	202
may establish rules for government of such trustees,.....	202
may sell meeting-house, or take down pews therein,.....	204
pews not to be paid for if house is unfit for public worship,.....	204
deacons, and other similar officers of, bodies corporate for taking and holding grants, &c.,.....	206
ministers, &c., in certain cases, to be joined in such body corporate,.....	206
ministers of, may take in succession parsonage lands, &c.,.....	205, 206
conveyance of such land by minister valid only during ministry, unless, &c.,.....	206
conveyance of church lands, how made,.....	206
churches, except episcopal, may choose committees to settle accounts of deacons, &c.,.....	206
limitation of grants to churches, &c.,.....	206
overseers of monthly meeting of Friends may hold lands, &c., as corporation,.....	206
limitation of grants to such meetings,.....	206
trustees of funds held by towns for religious purposes, &c., to report annually to selectmen, &c.,.....	206
may be removed, and vacancies filled, by probate court,.....	206
Members of, to remain such till they file notice with clerk,.....	201
no persons to be, without their consent in writing,.....	201
admission of, may be regulated by by-laws,.....	201
none but members to vote in affairs of society,.....	201
not taxable for property held as guardians and trustees,.....	202
Meetings, how warned,.....	201
annual, when to be held,.....	201
power of assessors or committees to call,.....	201
if assessors, &c., refuse, justice may call,.....	201
warrant for, what to contain,.....	201
nothing done at, valid, unless subject be in warrant,.....	201
clerk, &c., to preside at, till moderator is chosen,.....	201
moderators of, to be chosen by ballot,.....	201
powers of moderator,.....	201, 202
Officers, what to be chosen at annual meeting,.....	201
vacancies in office may be filled at any meeting,.....	202
Clerk, to be chosen at annual meeting, by ballot,.....	201
to be sworn, and by whom,.....	201
to preside in choice of moderator,.....	201
may swear assessors and collectors,.....	201
if absent, &c., clerks pro tempore may be elected,.....	201
Assessors, two or more, to be chosen by ballot, at annual meeting,.....	201
to be sworn, and by whom,.....	201
form of oath,.....	79, 201
to manage prudential affairs, unless a standing committee is appointed,.....	201

## PARISHES, &amp;c. — continued.

to have power of selectmen in calling meetings,.....	201
to insert in warrant for meeting any matter which five voters in writing request,.....	201
Collector, to be chosen at annual meeting by ballot,.....	201
to be sworn forthwith, if present,.....	201, 202
if not present, to be notified,.....	202
if he refuses to accept, or is not qualified within seven days, society to make new choice,.....	202
Treasurer, to be chosen at annual meeting by ballot, and sworn,.....	201
may be appointed collector, with power of town collector,.....	202

## MEETING-HOUSES.

exempted from taxation,.....	74
proprietors of, may organize themselves as corporation,.....	202
powers, liabilities, &c., when so organized,.....	202
such corporation may hold real and personal estate,.....	202
copy of proceedings at organization of, to be filed with town clerk and recorded,.....	202
proprietors may raise money for alteration, repairs, &c.,.....	202
meetings of, how called and warned,.....	202
money raised for, may be assessed on pews,.....	202
assessment of, may be committed to treasurer to collect,.....	202
to be collected, if not paid, by sale of pews at auction,.....	202
notice of assessment, and sale of pews, how to be given,.....	202
what to be evidence of such notice,.....	202
deeds of pews sold to be given by treasurer,.....	202
proprietors of, may take down pews, &c., for purpose of repairing, rebuilding, &c.,.....	202
pews to be appraised before taken down,.....	202

**PARTIES.**

- severally liable on written contracts, may be joined in suit, ..... 654
- judgment and executions in such suit, ..... 654
- To actions, when may be witnesses, ..... 673, 674
- may manage their own cases personally or by counsel, ..... 615
- new, may be brought in, ..... 657, 658
- amendments discontinuing as to, may be made, ..... 658
- may be examined on interrogatories, ..... 661, 662
- death, and other disabilities of, ..... 649-650
- in trustee process, ..... 726, 726
- corruption of jurors, arbitrators, &c., by, how punished, ..... 813

**PARTITION.**

- of lands held by joint tenants, or tenants in common, may be made by writs or petition in supreme or superior courts, ..... 698
- may be made among heirs, devisees, and those claiming under them, by probate court, ..... 574, 708
- proceedings for, legally commenced in either court, that court to have jurisdiction throughout, ..... 705, 706
- may be made notwithstanding existence of a lease, ..... 705
- may be made of estate subject to homestead, ..... 525
- and notwithstanding any of the tenants in common are trustees, attorneys, or guardians for other tenants, ..... 705
- former partitions in such cases confirmed, ..... 705
- persons not in being at time of application for, bound by proceedings, upon notices to parents, ..... 705
- in such case, next friend to be appointed for person not in being, whose expenses shall be paid by applicant, ..... 705
- when money is awarded, partition not to be established until money is paid, ..... 706
- returns of, may be set aside, and case recommitted to same or other commissioners, ..... 706
- when accepted, to be recorded, and remain in office of clerk or register, and a copy recorded in registry of deeds, ..... 706
- records in registry of deeds, heretofore made from originals, confirmed, ..... 706
- may be made by guardian of wards in certain cases, ..... 545
- married woman or her guardian may join with her husband or his guardian in making partition, ..... 539
- proceedings for, to survive on death of parties, and heirs, &c., how admitted, ..... 649, 650
- remedy against co-tenants who commit waste while proceedings are pending, ..... 709
- Water rights, and other incorporeal hereditaments, partition of, may be made by suit in equity in the supreme court, or as above provided, ..... 706
- partition may be so made of water of a navigable stream, in certain cases, ..... 706

**IN SUPREME AND SUPERIOR COURTS.**

- jurisdiction given to supreme and superior courts, ..... 553, 562
- proceedings for, when commenced in superior, how may be removed to supreme court, by affidavit or consent, ..... 562, 700
- to be made in the county where lands lie, but if parties interested are absent or un-

**PARTITION—continued.**

- known, petition may be made, and order of notice issued, in any county, ..... 698, 699
- may be made on petition of one or more part owners, ..... 698, 699
- shares of petitioners only to be set off, and residue to be left, ..... 698, 699
- Petition may be maintained only by one having an estate in possession, ..... 699
- but may be made, although the estate is leased in whole or in part, ..... 705
- cannot be maintained by tenant of freehold, by tenant having a term for years less than twenty years to run, ..... 698
- may be maintained between tenants for years, but partition not to affect landlords or reversioners, ..... 699
- to be indorsed in like manner as writs in other cases, ..... 699
- what shall be alleged therein, ..... 699
- may be filed in clerk's office in term time or vacation, ..... 699
- summons on, how issued and served in such case, ..... 699
- may be served without being filed in clerk's office, ..... 699
- absent and unknown persons interested may be notified by publication in newspaper, according to order of court, or absent persons may be notified personally, ..... 699
- in such case, petition may be presented in any county, and summons issued returnable in county where lands lie, ..... 699
- persons not in being for whom estate is limited in trust, how protected and bound, and proceedings in relation thereto, ..... 705
- if service is defective or insufficient, or any person notified fails to appear, court may order further notice, ..... 699
- court may at any time order case continued, that absent parties, whether named in petition or not, may have time to appear, ..... 699, 700
- death of parties to, effect of, and how heirs and devisees may be admitted, ..... 649, 650
- a guardian may be assigned by court for any infant or insane person interested, ..... 700
- for persons not in being, ..... 705
- all persons interested may appear and plead, or answer jointly or severally, ..... 700
- pleadings in, to be conducted as in actions at law, ..... 700
- if person not named in petition appears and pleads or answers, petitioner may reply that he ought not to be admitted, and any other matter also, ..... 700
- if it appears, in such case, that respondent has no interest, the matter of his objection shall not be inquired of, ..... 700
- Advancements, questions may be heard in said courts, or case may be continued and the question of advancement determined in probate court, ..... 705
- Improvements, value of, to be allowed to respondent in certain cases, ..... 708
- if awarded to respondent, petitioner not to have judgment for partition until he has paid the same, ..... 708
- how allowed on new petition when made after a former partition, not binding

## PARTITION—continued.

on certain parties, or when they are subsequently evicted,.....	702, 706
Costs on trial of an issue,.....	700
how allowed against a respondent who objects to partition,.....	708
Judgment for partition to be awarded for such share as petitioner is entitled to, although not all he claims,....	700
appeal from such judgment, in superior court, on matters of law apparent on record, may be taken to supreme court,.....	701
Commissioners, three or five to be appointed by court, to make partition,.....	700
warrant to, to express shares to be set off,.....	700
to be sworn, and certificate of oath made on warrant,.....	700
to give notice to all parties interested who are in the state,....	700
all of, to meet, but acts of majority to be valid, . . . . .	700
costs and expenses of, how allowed and paid,.....	708, 787
shares of petitioners may be set off together or separately,.....	700
when premises consist of mill or tenement, which cannot be divided without injury, whole may be set to one, who will accept it, upon paying award of commissioners to make it equal,.....	700, 701
or exclusive occupancy of whole or part may be set off to parties alternately, . . . . .	701
in such case, how far tenants liable to each other to premises during their occupancy,....	701
how far tenants, while so occupying, entitled to redress against wrong doer,.....	701
how far all tenants entitled to damages against wrong doer, and how such damages to be divided,.....	701
returns of commissioners' doings, with their warrant, to be made to court,.....	701
may be set aside, and recommitment to same or other commissioners,.....	708
judgment to be rendered, if the report is confirmed that partition be firm and effectual, . . . . .	704
appeal therefrom in matters of law, apparent on record when entered in superior court, may be taken to supreme court,.....	701
in such appeal, on petition for, or writ of partition, judgment awarding that partition be made shall not be drawn in question,.....	701
when finally established, to be recorded, where,.....	706
not to be established until money awarded is paid,.....	706
final, to be conclusive as to rights of possession and property of all parties and privies thereto,.....	701
and on all who might have appeared, . . . . .	701
If a part owner, for whom a share is left, is out of state, he may, within three years, apply for new partition,.....	701
court may grant such petition if it appears that his share was less than he was entitled to,.....	701
In such case, new division of whole premises shall not be required, but partition may be made equal by taking from and add-	

## PARTITION—continued.

ing to shares, or by awarding money,.....	701, 702, 78
person claiming in severalty, who did not appear, not concluded by judgment, but may bring action for land claimed by him,.....	78
person who did not appear, claiming a share assigned or left, concluded by partition,.....	78
in such case, how action for his share shall be brought,.....	72
proceedings when two or more respondents appear and claim same share,.....	78
rights and remedies of persons who did not appear, if they afterwards claim as part owners with parties to the suit, and their share was not known, or not left,.....	72
If a person to whom a share was assigned or left was dead at the time, his heirs or devisees shall have same rights as if they had not been notified,.....	72
party evicted of share assigned or left by this paramount, entitled to new partition of residue,.....	72, 78
Mortgages, attaching creditors, and persons having liens on any interest, concluded by judgment, and may hold share set off or left for such interest,.....	72

## IN PROBATE COURT.

may be made in, of all the real estate of deceased person, among his heirs and devisees, and those claiming under them, in probate court of county where his estate is settled,.....	480, 54, 78
and of lands acquired for the estate by executor or administrator, by foreclosure of mortgage or levy of execution, . . . . .	48
partition for, by whom and how made, and how served,.....	78
shall not be made when shares are in dispute or depend upon construction of will, or other matters proper for court of common law and a jury,.....	74
If estate of deceased is owned in common with others, it may be first set off from their	



# INDEX.

## PARTITION—continued.

- persons not in being, how to be protected, and bound, and proceedings respecting,..... 706
- all estate of deceased which party interested as heir or devisee, or persons under them, desire to have included, to be divided,..... 704
- petitioners' share to be set off, and the residue to be divided among each of the owners, unless two or more consent to hold undivided,..... 704
- when any part of estate cannot be divided without injury, it may be assigned to one, he paying to others the sums awarded by the commissioners,..... 704
- males to be preferred to females, and elder sons to younger, ..... 704
- whole or any part may be set off to one or more, upon paying to others sums awarded by the commissioners,..... 704
- in such cases, partition not to be established until money is paid,..... 706
- costs, how allowed and paid,..... 704, 787
- if not paid, execution may issue,..... 704
- advancements may be settled in probate courts,..... 706
- improvements, after partition, how allowed in second partition, to persons evicted, or against persons not parties to first,..... 706
- original return to remain in clerk's office or probate office, and be recorded there, and a copy recorded in registry of deeds, ..... 706
- how far conclusive, when confirmed, on persons interested,..... 706
- persons not concluded may pursue their remedy as if proceedings had not been had,..... 706

## PARTNERSHIPS.

- how and when taxed for personal property employed in their business,..... 76, 77
- when taxed jointly, each partner liable for whole tax, ..... 77
- ships and vessels of, how and where taxed,..... 77
- embezzlement by clerks and servants of, how punished, ..... 800
- names of former members of, not to be used by other partners, without consent, &c.,..... 298
- proceedings by and against, in insolvency,..... 597
- suits in equity, between partners, may be brought in supreme court, and receivers appointed, ..... 559
- Limited, may be formed for mercantile, mechanical, or manufacturing business, ..... 296
- to consist of general and special partners,..... 296
- not authorized to transact insurance or banking business,..... 296
- general partners of, to be responsible, like partners in other firms, ..... 296
- special partners to furnish specific sum in cash, and not personally liable, except, &c.,..... 296
- certificates of, to be made, specifying names, residence, stock, &c.,..... 296
- to be acknowledged and recorded in registry of deeds, ..... 296
- if false, all liable as general partners,..... 296
- to be published, otherwise partnerships to be deemed general,..... 296
- to be recorded and advertised on every renewal of partnership,..... 296
- name or style of, to contain names of general partners only,..... 297
- special partner, whose name is used with-

## PARTNERSHIPS—continued.

- his consent, to be deemed, ..... 706
- liable on contract made by shows he acted as special responsible if effects of partner to pay debts,.....
- capital stock of, not to be withdrawn to reduce it below amount suits to be by and against general partner, &c.,.....
- dissolution of, before time or how to be recorded, &c. members of, when not otherwise have rights and liabilities, ..... 706
- insolvency proceedings by and against, ..... 706

## PASSENGERS.

- liability of common carriers of, for gross carelessness in the carrying of stage-coaches, &c., how to be recorded, &c. leasing horses untied, as coach,.....
- (See *Alien Passenger*)

## PASSPORTS.

- to be furnished by secretary to color,.....

## PAUPERS.

- SUPPORT OF BY TOWNS, money may be granted by towns for settlement of, how acquired,.....
- to be relieved by city or town where settled, ..... 706
- to be under care and oversight of poor,.....
- overseers of poor to have same as masters of workhouses,.....
- what kindred of, if able, bound to support kindred of, may be assessed by such complaint of town, &c. has been relieved, &c.,.....
- not to be assessed for expenses than six months before complaint may be assessed in weekly sum for future support, execution against, may be renewed for past assessments years, ..... 706
- costs against, how taxed when adjudged liable to support court may order with which complaint against, how filed given, ..... 706
- not summoned in original proceedings summonsed, &c.,.....
- court may make new orders against, &c.,.....
- liability of, for support of pauper houses when they have a within the state,.....
- needing relief in places where they ment, to be relieved poor, ..... 706
- expenses of supporting such may place incurring them against therefor, ..... 706
- action for such recovery to be commenced two years after cause arises recovery in such action to bar defending settlement in future

**PAUPERS — continued.**

towns liable for support of, not required to pay more than one dollar a week to another town, if removed within thirty days, .....	393
having no settlement within this state, to be relieved, &c., till removed to state almshouse, .....	393
expenses of relief in such cases, how to be paid, .....	393
towns liable to individuals for support of, after notice, &c., till overseers provide, .....	393
provisions for notice to towns where paupers have settlement, that they are supported in other places, .....	394
for removal of, to place of settlement, .....	394
may be removed, if overseers do not, within two months after notice, return written objections, .....	394
towns barred from contesting settlement of, if overseers do not reply to notice within two months, .....	394
notifications and answers thereto, sent by overseers by mail, to be deemed sufficient, .....	394
penalty for bringing into and keeping, in place where they have no legal settlement, knowingly, &c., .....	394
how recovered, and to whose use, .....	394
effects of deceased may be taken by overseers, and applied to reimburse expense of support, &c., .....	394
suits concerning, to be prosecuted and defended by overseers in behalf of their towns, .....	394
returns of, &c., to be made annually by overseers, &c., to secretary of commonwealth, .....	394
form and contents of such returns, .....	394, 395
penalty on overseers, &c., for neglect in making returns, .....	395
abstract of returns to be made by secretary for use of legislature, .....	395
in state almshouses, having settlement within state, to be supported by town where such settlement is, .....	402, 403
liability of kindred for support of such paupers, .....	403

**STATE PAUPERS.**

board of commissioners of, and of alien passengers, how constituted, .....	396
commissioners may appoint persons to see that laws respecting, are enforced in state almshouses, &c., .....	396
to prescribe forms for, and furnish certificates to be used in, sending to almshouses, .....	397
to prescribe forms of returns by superintendents of almshouses, &c., respecting, .....	397
to have power of overseers of poor in relation to state paupers in hospitals, .....	397
to make annual report to governor and council, .....	397
compensation of, .....	397
may be transferred from one state almshouse or hospital to another by commissioners, .....	397
arriving by water, when they cannot be removed to state almshouse, to be supported at Rainford Island hospital, .....	401
may be sent by towns to hospital, by permission of commissioners of alien passengers, .....	401
liability of kindred of, &c., in such cases, and how enforced, .....	401

**PAUPERS — continued.**

may be sent to state almshouses by towns, &c., .....	397
discharged from state prison, &c., to be removed to state almshouses in certain cases, .....	401, 402
if settlement of, is discovered, such pauper to be removed to place of settlement, .....	402
if too sick to be removed, may be provided for in state prison, &c., .....	402
may be supported in place where wife has legal settlement, at expense of state, .....	402
accounts of expense in such case, how audited, &c., .....	402
to be provided for by towns, &c., at expense of state, when state almshouses are full, .....	402
inspectors of state almshouses to have powers of overseers in relation to, and their property, .....	402
employment of, may be contracted for with superintendent, &c., .....	402
refusing to avail themselves of such employment, to forfeit claims as a state pauper, .....	402
penalty on, for leaving state almshouse without consent of inspectors, .....	402
may be sent to place where they belong by justice of superior court, &c., .....	402
lunatic paupers may be sent away in like manner by probate court, on complaint, &c., .....	402
no allowance to be made to counties, towns, &c., for, except in cases expressly provided by law, .....	402
accounts of counties, towns, &c., for support of, how	...

**PERSON.**

may be applied to bodies corporate and politic, ..... 618

**PERSON ACCUSED.**

(See Prisoners.)

**PERSONAL ESTATE.**

what included in, for purpose of taxation, ..... 74  
 where taxable, ..... 75, 76  
 mortgaged or pledged, to whom taxable, ..... 76  
 of persons under guardianship, where taxable, ..... 76  
 held in trust, where taxable, ..... 76  
 deposited to accumulate, where taxable, ..... 76  
 of religious society, held as ministerial fund, where  
 and to whom taxed, ..... 76  
 of partners, how and where taxable, ..... 76, 77  
 may be disposed of by will, ..... 476  
 of deceased person, how distributed, ..... 486  
 what to be deemed, in certain cases, ..... 489, 490  
 to be accounted for at its appraisal, except,  
 &c., ..... 494, 496

**PERSONAL LIBERTY.**

provisions of law for the protection of, ..... 740-742  
 governor to appoint commissioners in each county to  
 defend fugitives, ..... 740  
 any attorney, when desired by fugitive, may act as  
 counsel, ..... 740  
 commissioners to pay expenses of defence, ..... 740, 741  
 and be reimbursed by commonwealth, ..... 741  
 persons holding office of honor, trust, &c., under  
 state laws, not to issue warrant under  
 fugitive slave law, ..... 741  
 justices of the peace to be fined or imprisoned if  
 they so act, ..... 741  
 state jails or prisons not to be used for detention of  
 persons claimed as fugitives, ..... 741  
 punishment for persons removing, or aiding in re-  
 moving, from the state those not held to  
 service or labor, ..... 741  
 for coming here with intent so to remove, ..... 741  
 those suffering from such removal, &c., may also  
 have damages therefor, ..... 741  
 penalty on sheriffs, &c., arresting fugitives from  
 labor, ..... 741  
 on members of volunteer militia for acting in  
 seizure, detention, or rendition of such  
 fugitives, ..... 741  
 penalties and prohibitions not to apply to acts  
 of military obedience of any officer or pri-  
 vate, ..... 742  
 these provisions not to apply to fugitives from jus-  
 tice, ..... 742  
 persons holding judicial office under the United  
 States, or office of commissioner of  
 circuit court, to hold no judicial office  
 in state except that of justice of the  
 peace, ..... 742  
 no justice of the peace, while such commissioner, can  
 issue any state process except to summon  
 witnesses, ..... 742

**PERSONAL PROPERTY.**

wilful and malicious destruction of, how pun-  
 ished, ..... 806  
 punishment when value of property does not ex-  
 ceed fifteen dollars, ..... 806

**PERSONAL REPLEVIN.** (See Replevin.)

provisions concerning, ..... 789, 740

**FESTILENCE.**

adjournment of courts in consequence of, ..... 617  
 prisoners may be removed from jail, &c., in case  
 of, ..... 864

**PETT TREASON.**

distinction between, and murder, abolished, ..... 791  
 prosecution and punishment of, ..... 790

89\*

**PETITION TO LEGISLATURE.**

right of, ..... 18  
 notice of, to be given, and how, when affecting rights  
 of individuals, &c., ..... 47  
 when affecting cities or towns, ..... 47  
 when for act of incorporation, &c., ..... 47, 48  
 for incorporation, notice of, to specify capital re-  
 quired, ..... 48  
 for extension of charter, notice to specify the  
 same, ..... 48  
 proof of publication of notice, how made, ..... 48  
 proof and petition to be presented within first ten  
 days of session, ..... 48

**PEWS.**

to be personal estate, ..... 204  
 proceedings relating to, when house is rebuilt,  
 &c., ..... 204  
 to be purchased in certain cases at appraised  
 value, ..... 204  
 used by debtor and family, exempted from attach-  
 ment and execution, ..... 688  
 may be sold for non-payment of tax legally laid  
 thereon, ..... 688  
 exempted from taxation, except for parochial pur-  
 poses, ..... 74, 204  
 from levy on execution and from attach-  
 ment, ..... 624, 688

**PHYSICIANS AND SURGEONS.**

to certify certain facts concerning deaths, when re-  
 quested, under penalty, ..... 160  
 to give notice to board of health, &c., of dangerous  
 disease, under penalty, ..... 198  
 dead bodies may be furnished to, by overseers of  
 poor, &c., ..... 195  
 to give bond that such body shall be used for promo-  
 tion of anatomical science, ..... 195  
 and to cause remains to be decently buried, ..... 195  
 aiding in coroner's inquest, pay of, ..... 820  
 when may have body of person executed, for dis-  
 section, ..... 791  
 exempted from serving as jurors, ..... 680  
 of state prison, appointment, duty, &c., ..... 870, 872

**PICKEREL.**

provisions respecting the taking of, &c., ..... 431

**PICKLED FISH.**

provisions respecting, ..... 261-264  
 (See Fish.)

**PIGEONS.**

wilfully killing or frightening from beds, how pun-  
 ished, ..... 803  
 person so doing liable to owner for actual dam-  
 age, ..... 806

**PILFERERS.**

common, how arrested, secured, and punished,  
 ..... 820, 821

**PILOTAGE.**

fees for, to be established by commissioners, ..... 288, 289  
 registered vessels, of two hundred tons and under, to  
 pay half pilotage, ..... 289  
 vessels exempt from, ..... 289  
 rates of, for vessels taking steam towage, ..... 289

**PILOTS.**

commissioners of, how appointed, and term of of-  
 fice, ..... 287  
 to grant commissions to port and bay pi-  
 lots, ..... 287  
 to keep an office, and register and examine com-  
 plaints against pilots, ..... 288  
 to notify treasurer when condition of pilot's  
 bond is broken, ..... 288  
 to make and publish regulations concerning pi-  
 lots and pilotage, ..... 288, 289

**PILOTS — continued.**

to keep record of all official acts, .....	289	I
to make annual report to secretary, .....	289	
compensation of, .....	288	
exempted from military duty, .....	92	
how commissioned, .....	287	
to give bond, .....	288	
how surety may terminate liability on bond of, ..	288	I
If bond insufficient, commissioners may require new one, .....	288	
not to interfere upon each other's limits, .....	287	
to take charge of all vessels within limits, ex- cept fishing and certain coasting ves- sels, .....	287, 288	
fee of, to be fixed by commissioners, .....	288, 289	
division of, in certain cases, between bay and port pilots, .....	287	
to be paid by inward bound vessels, except, &c., to first pilot offering his services, .....	288	
vessels of two hundred tons and under, not taking pilot, to pay half, .....	288	
lien for, upon vessel, .....	288	
to render quarterly accounts to commissioners, .....	288	
penalty for false return, .....	288	
to pay six per cent. of fees received to commission- ers, .....	288	I
penalty on person acting as, without commis- sion, .....	288	
to make complaint for injury to property of Humane Society, .....	806	
duties, fees, &c., of bay or general pilots, .....	287	

**PIPERS.**

common, how punished, .....	820, 821
-----------------------------	----------

**PLACE.**

how construed, .....	62
----------------------	----

**PLANTS.**

punishment for wilfully digging up, .....	806
---	-----

**PLEADING AND PRACTICE.**

provisions respecting, .....	658, 660
not to change rules of evidence, measure of damages, jurisdiction of any court, nor the locality of any action, .....	663

**PLEADINGS.**

divisions of personal actions, .....	658	
method of declaring, .....	658, 659, 667	
in action of trover, .....	654	
to set forth copy of written instrument relied on, or legal effect thereof, .....	654	I
to set forth condition of bonds, &c., .....	654	
when whole contract is not set out, court may, on motion, order original, or copy to be filed, .....	654	I
referring to general statute, how to designate same, .....	654	I
may allege facts in the alternative, .....	657	
to be so construed by court as to secure pre- cision and certainty, and discourage vagueness, .....	657	I
facts alleged, and not denied, to be deemed to be ad- mitted, .....	657	I
need not state evidence, nor disclose means of proof, .....	657	
shall be deemed at issue when allegations are closed, as in real and mixed actions, when plea is filed, .....	657	
court may order either party to file a statement of particulars, .....	660	
require unnecessary counts and statements to be stricken out, .....	661	I
not to be evidence .....	661	
changes in suit after commencement, may be sug- gested and entered of record, .....	662	

# INDEX.

## POLICE COURTS—continued.

in civil and criminal cases to be kept separately,.....	569
terms of, to be fixed by justice or court, and civil and criminal to be separate,.....	571
to be held by judge, or in his absence, or disability, or in case of vacancy, by senior special justice,.....	571
to be held as often as necessary, in place provided by district, and may be adjourned,.....	571
two or more sessions may be held at same time, and a special justice may, on request of judge, hold a session at same time as judge,.....	571
expenses of, for rent, care of room, stationery, &c., to be audited by court, and paid from county treasury,.....	571
two thirds of the expenses to be repaid from state treasury,.....	571
to make rules,.....	571
may issue summons and other process to witness to run into any county,.....	571
complaints to, to be entered on docket,.....	571
processes of, to be under seal, bear test of judge or senior judge, and signed by clerk or assistant clerk,.....	571
in other respects to be like processes of justices of the peace,.....	571
when cases are adjourned to future day, parties and witnesses need not attend from day to day, but shall recognize to attend at time of adjournment,.....	571
fees and costs in, how taxed, certified, and paid,.....	572, 788
returns of criminal statistics, &c., how made,.....	129
appeals from, to superior court, to be had, entered, conducted, and disposed of like appeals from justices of the peace,.....	572
costs on appeals from judgments of, in civil cases,.....	780
to enter on docket the day when any civil case is finally disposed of for the term,.....	788
(See <i>Justices of the Peace.</i> )	

## JURISDICTION.

same as that of justices of the peace,.....	570
to have powers necessary to discharge their duties,.....	570
of offences within their district, jurisdiction to be exclusive,.....	570
additional and concurrent with superior court of certain cases of assault and battery,.....	570
of offences punishable by fine not exceeding one hundred dollars, or imprisonment not exceeding six months, or both,.....	570
of certain cases of obtaining property by false pretences, games, fortune telling, and other tricks; and of buying, concealing, and aiding in concealing, stolen property,.....	570
court may decline to exercise final jurisdiction of cases within the concurrent jurisdiction of superior court,.....	570
warrants in criminal cases issued by the court, justices, or any justices of the peace, to be returnable before police courts, in certain cases,.....	570
to be returned to court specified therein, with return of officer indorsed thereon,.....	571
witnesses and parties need not attend from day to	

## POLICE COURTS—continued.

day, when cases are adjourned,.....	
may discharge poor convicts,.....	
In civil cases, same as justice exclusive when all plain and trustees, if any, restrict,.....	
police court of Boston to have jurisdiction, concurrently with civil cases in which damages claimed does not exceed dollars,.....	

## JUDGES.

one justice and two special justices appointment and tenure of office of not to be retained or employed any case pending or courts,.....	
may receive complaints and issue court not in session,.....	
to make rules, and act as clerk when appointed,.....	
to hold courts, and in case of vacancies, special justice processes of courts to bear test of, may discharge poor debtors,.....	
Salaries of,.....	
not to receive fees for any addition for issuing warrants and any capacity,.....	
Special, not to be retained as counsel which they shall have of senior to act in case of vacancy judge,.....	
may, on request of judge, hold court,.....	
writes to bear test of, in case judge or vacancy in office compensation of, to be paid rate as his compensation fees taxable for the service	

## CLERKS.

to be elected by certain cities and are established,.....	
vacancies in, how filled by election to be sworn, give bonds, attend records,.....	
may be appointed by judges of the office of clerk in law,.....	
may appoint assistants, with appointment,.....	
shall be responsible for, and may appoint,.....	
on death, absence, or removal of, to be appointed,.....	
duties, compensation, and oath,.....	
not to be retained as counsel in tried in their courts,.....	
to sign processes,.....	
to make all warrants and processes receive fees, fines, and costs,.....	
fees of, for copies, to be indorsed to account with and pay to county cost, and fines quartered to pay certain fines to cities and	

**POLICE COURTS—continued.**

certain fees to parties entitled thereto, or account therefor to county treasurer, . . . 572  
 of police court of Boston to account to board of accounts and pay fees and cost to city treasurer, . . . 572, 574  
 assistant clerks of Boston court, salaries of, . . . 573  
 Salaries of, . . . 572, 573  
 not to receive fees for any additional services, nor for issuing warrants and other processes in any capacity, . . . 573

**POLICE COURT OF BOSTON. SPECIAL PROVISIONS.**

court established, . . . 569  
 three justices, how appointed and tenure of offices, . . . 573  
 justices to make rules, and distribute business among themselves, . . . 573  
 senior justice to be first justice, . . . 573  
 any justice may receive complaints and issue warrants, . . . 573  
 assistant clerks, salaries of, payable out of state treasury, . . . 573  
 court to be held daily for criminal business, . . . 573  
   weekly for civil business, each term commencing on Saturday, and action may be continued to any future day, . . . 573  
 different justices may hold different sessions at same time, . . . 573  
 to have same jurisdiction as justices of the peace, which shall be exclusive when all plaintiffs and defendants reside in the district, . . . 573  
 additional jurisdiction to extent of three hundred dollars concurrently with superior court, . . . 573  
 records, proceedings, jurisdiction of justices' court for county of Suffolk transfer to, . . .  
 clerk to render an account to board of accounts, and pay over costs and fees to treasurer Boston, . . .

**POLICE OFFICERS.**

may be appointed by selectmen, to hold office during their pleasure, . . .  
 to have power of constables, except to serve a process, . . .  
 refusing to assist, how punished, . . .  
 falsely assuming to be, how punished, . . .

**POLICY.**

of insurance on mutual plan, not to be less for more than three fourths of property insured, . . .  
 lien on building, land, &c., . . .  
   to be set forth on face of policy, . . .  
   to cease upon alienation of property to bona fide purchaser, unless policy continued, . . .  
 manner of enforcement of, . . .  
 if property sold on execution, right of redemption reserved to owner, . . .  
 shall designate the class of property to be insured, . . .  
 forms of declarations and answers, in and out of court, . . .

**POLL TAX, (see Taxes.)****POLYGAMY.**

defined and punished, . . .  
 excepted cases, . . .

**POOR CONVICTS.**

duty of magistrate ordering the commitment of, discharge of, . . .

**POOR CONVICTS—continued.**

discharge of, after confinement for three months for fine and costs, . . . 573  
 proceedings in such case, . . . 573  
 for thirty days, if fine, or fine and costs do not exceed ten dollars, . . . 573, 579  
 for forty days, if fine or fine and costs do not exceed twenty dollars, . . . 579  
 proceedings in such cases, . . . 573, 579  
 in Suffolk county, poor convicts held only for fine and costs, may be discharged at any time, by justices of police court, . . . 579  
 if held under sentence of other court, one justice thereof must assent to discharge in writing, . . . 579  
 persons under guardianship, if property is not in their actual control, may be so discharged, . . . 579  
 commonwealth may recover fine and costs of guardian, if he has assets, . . . 579  
 suit therefor to be brought in one year, . . . 579  
 fees of justices for discharging poor convicts, . . . 579

**POOR DEBTORS.**

provisions concerning, . . . 623  
 not to be arrested on mesne process, in actions of contract, unless affidavit is made, and certificate of magistrate procured, . . . 623  
 before whom affidavit must be made, and what must be set out therein, and proved, . . . 623  
 how arrested on mesne process in actions of contract for money collected as attorneys at law, . . . 623  
 how arrested on mesne process in actions of tort, . . . 624  
 how arrested on executions in actions of contract, . . . 624

POOR DEBTORS—*continued.*

oath that he does not intend to leave state, magistrate to appoint a time for his examination, and issue notice to creditor,.....	635
form of notice,.....	635
notice may be given that he desires to take both oaths,.....	635
service of notice, how made in different cases,.....	635, 636
when notice that defendant desires to take poor debtor's oath has once been given, new notice not to be given until expiration of seven days,.....	636
when notice has been served, some magistrate to attend at time and place appointed, and examine debtor,.....	636
pending examination, how recognisance may be taken,.....	636
but debtor not to recognise after oath is refused, except in cases of appeal,.....	636
examination of, upon notice of desire to take oath that he does not intend to leave state, and how discharged,.....	636
examination of, upon notice of desire to take poor debtor's oath, and how discharged,.....	636
not entitled to benefit of poor debtor's oath, if, after being arrested, he mispends or misuses certain property,.....	636
nor if he makes default, after charges of fraud are filed against him, or is convicted thereon,.....	636
may be discharged by magistrate, upon taking poor debtor's oath, if magistrate is satisfied that facts set forth in oath are true,.....	636, 637
form of poor debtor's oath,.....	637
form of certificate, of discharge, and the effect thereof,.....	637
after discharge, judgment to remain in force,.....	637
execution subsequently issued on judgment to run against estate, and not against body of debtor,.....	637
on bail on meane process, or imprisoned on any execution, may be discharged on taking oath as when under arrest,.....	637
not to be discharged, after writ of <i>scire facias</i> on bail bond has been served on sureties, unless they pay costs on such writ,.....	637

IMPRISONMENT OF.

to be imprisoned when arrested on meane process, in actions of tort, unless they give bail,.....	637
in actions of contract, if they do not desire to take oath, or fail to recognise, or do not give bail, or the oath is refused by the magistrate,.....	637
in such cases, magistrate to make certificate, and defendant to be imprisoned,.....	637
to be kept, when so committed, until final judgment, and for thirty days thereafter if judgment is against him, unless he recognises, gives bail or a bond, or takes the oath,.....	637, 638
to be imprisoned when arrested on execution, if they do not desire to take the oath, or fail to procure sureties, or the oath is refused them,.....	638
certificate to be made by magistrate, in such case,.....	638

POOR DEBTORS—*continued.*

to be kept until they recognise, satisfy the execution, take the oath, or are released by the creditor,.....	638
when imprisoned, to be supported at expense of creditor, if he claims support as a pauper; jailer may discharge him, if creditor fails to pay on demand,.....	638
may be discharged by creditor, if he claims support as a pauper,.....	638
when so discharged by jailer or creditor, debtor to remain liable for debt and costs, but his body not to be again arrested,.....	638
not to be discharged from imprisonment, upon satisfying execution, unless he also pays the cost and the expenses of his support in prison,.....	638
how long to be imprisoned, when surrendered by bail,.....	643, 644

PUNISHMENT FOR FRAUD.

pending examination of debtor desiring to take poor debtor's oath, charges of fraud may be filed against him,.....	638
when charges are made in affidavit for arrest, or are filed, the same to be considered in the nature of a writ at law, debtor to plead, and trial, and evidence therein,.....	638
either party may appeal to superior court from judgment of magistrate thereon,.....	638, 639
appellant to recognise,.....	639
if debtor makes default, after charges are filed, or is convicted thereon, how punished,.....	639
not afterwards to be bailed in same action,.....	642

DISCHARGE OF, WHEN COMMITTED ON WARRANTS OF DISTRESS IN FAVOR OF STATE.

persons so committed may be discharged in like manner as poor debtors,.....	639
may represent to jailer their desire to take poor debtor's oath,.....	639
jailer to notify magistrate, who shall appoint time for hearing, and cause notice to be given to district-attorney,.....	639
district-attorney to attend, or appoint some one to attend; compensation therefor,.....	639

POOR DEBTORS WHO ARE INSANE, HOW DISCHARGED OR REMOVED.

when imprisoned, and unable, by reason of insanity, to take poor debtor's oath, any person interested may petition judge of probate court for his removal from jail,.....	639
judge to appoint time and place for hearing and order notice to creditor,.....	639
may discharge debtor, or remove him to hospital or other place, if he is satisfied of his insanity,.....	639, 640
when debtor is so discharged or removed, legal rights of creditor to remain,.....	639

DISCHARGE OF, IN SPECIAL CASES.

when committed for non-payment of taxes,.....	82
in bastardy process,.....	405

IMPRISONED WHEN JUDGMENT IS RENDERED AGAINST THEM, OR WHEN SURRENDERED BY BAIL AFTER JUDGMENT.

when a debtor is in prison on meane process, where judgment is rendered against him, he may be discharged by giving	
---	--

**POOR DEBTORS—continued.**

bond to surrender himself in thirty days, . . . . .	640
how debtor may afterwards be arrested on execution issued in such action, . . . . .	640
jailer to certify on execution, if left with him, whether debtor has surrendered, and give certificate to officer, . . . . .	640
when debtor is surrendered by his bail after judgment, he may be discharged by giving bond to surrender himself in thirty days, . . . . .	640
bond, conditions of, . . . . .	640
debtor, in either of said cases, may be taken and committed on execution within said thirty days, . . . . .	640, 641

**SURRENDER OF PRINCIPAL OR RECOGNIZANCES.**

sureties in recognizances may surrender principal, . . . . .	641
--	-----

**REMEDY ON RECOGNIZANCES AND BONDS.**

when recognizance and bond are broken, actions of contract may be brought thereon, . . . . .	641
judgment in such case, . . . . .	641

**REMEDY AGAINST OFFICER FOR ESCAPES.**

when prisoner escapes from officer, creditor may maintain action of tort against officer, and also scire facias or contract against debtor, . . . . .	641
---	-----

**FEES.**

of magistrates, amount, how allowed and taxed, . . . .	641
of judges of probate court, for removal or discharge of insane poor debtors, . . . . .	641
of jailers, . . . . .	641, 642

**POSTMASTERS.**

and persons in care of United States mail, exempted from military and jury duty, . . . . .	92, 6
--	-------

**POST OFFICES AND ROADS.**

power of congress to establish, . . . . .	
---	--

**POSTHUMOUS CHILDREN.**

considered as living at death of their parent, . . . . .	4
omitted in will of father, to take share as if he had died intestate, . . . . .	4
devises, &c., to contribute equally, in such cases, to shares of, . . . . .	4
to contribute with devisees, &c., for payment of debts of testator, . . . . .	4
may claim contribution from devisees, &c., . . . . .	4
guardian of, may be appointed by father in his will, . . . . .	5

**POSTS.**

on bridges, sidewalks, &c., punishment for breaking, removing, &c., . . . . .	8
---	---

**POT AND PEARL ASHES.**

inspector-general of, appointment of, and term of office, . . . . .	2
to be sworn, . . . . .	2
to give bond, . . . . .	2
may appoint deputy-inspectors, in seaports where pot and pearl ashes are exported, . . . . .	258, 2
to be responsible for his deputies, . . . . .	276, 2
to make returns annually to secretary, . . . . .	2
fees of, . . . . .	2
deputy-inspectors to be sworn and give bond, . . . . .	276, 2
to make returns once in six months, . . . . .	2

**POT AND PEARL ASHES—continued.**

penalty on inspectors for neglect, &c., in inspection, . . . . .	277
fees of inspectors, . . . . .	277
casks, quality and size of, . . . . .	277
to be branded by manufacturer, under penalty, . . . . .	277
to be weighed by inspector, and weight marked on each head, . . . . .	277
how inspected, &c., . . . . .	277
sorts and denominations of, how branded on casks, . . . . .	277
not to be shipped for exportation until inspected, . . . . .	277
imported from other states, may be exported without reinspection, . . . . .	277
to be forfeited, if shipped without branding, . . . . .	277
inspector to seize and label casks if so shipped, . . . .	277
penalty on master of vessel for receiving on board casks not branded, . . . . .	277
on master or crew for obstructing search by inspectors, . . . . .	278
for counterfeiting brands, or branding falsely, . . . . .	278
for shifting contents of inspected casks, . . . . .	278

**POTATOES.**

standard weight of bushel of, to be sixty pounds, . . . . .	278
mean weight, how to be ascertained, . . . . .	278
penalty for selling without ascertaining weight of, . . . . .	278
when these provisions not to apply, . . . . .	278

**POUND.**

one or more to be maintained in every city and town, . . . . .	185
penalty on town, &c., for neglect to maintain, &c., . . . . .	185



**PRISONS.**

not to be used for the detention of persons under the fugitive slave law,..... 741

**PRISONERS.**

entitled to know from officer arresting the reason of their arrest,..... 789  
to see, on request, the precept of officer,..... 789  
may have counsel, or defend themselves,..... 790  
produce witnesses in their favor,..... 790  
entitled to meet witnesses against them,..... 790  
former conviction or acquittal to bar, &c.,..... 790  
when no defence,..... 790  
aiding to escape from prison, how punished,..... 818  
from officer, how punished,..... 818  
officer voluntarily suffering escape of, how punished,..... 818  
negligently suffering escape, how punished,..... 818  
refusing to receive, how punished,..... 818  
refusing to arrest, how punished,..... 818  
refusing to assist officer in securing, how punished,..... 818  
refusing to obey justice of peace in securing, how punished,..... 814  
in examination before magistrate, entitled to counsel,..... 838  
may be detained in jail, &c.,..... 857  
may be removed from one jail to another in same county,..... 857  
list of, to be returned into superior court at opening of each term,..... 858  
provisions for classifying, &c.,..... 858, 862

(See *Houses of Correction, State Prison.*)

**PRIVATE WAYS AND BRIDGES, (see Highways,)**..... 239, 248

**PRIZE FIGHTING.**

penalty for,..... 792  
for aiding, promoting, &c.,..... 792  
for leaving the state to engage in, out of the state,..... 792

**PROBATE COURTS.**

established in each county,..... 574  
to be held on days fixed by law,..... 27  
judges and register of probate and insolvency to be judge and register of,..... 574  
have jurisdiction of the probate of wills, and granting administration,..... 574  
of the appointment of guardians to minors and others,..... 543, 544, 574  
of all matters relating to the settlement of estates of deceased persons and wards,..... 574  
of petitions for adoption of children and change of names,..... 547, 548, 574  
of certain matters relating to funds for charitable and religious purposes,..... 206  
of the appointment of trustees in certain cases,..... 234, 330, 500  
when a case is within jurisdiction of two courts, the one in which proceedings are first commenced shall retain it throughout,..... 574  
administration or guardianship first granted by, shall extend throughout the state,..... 574  
jurisdiction, so far as it depends upon residence of any person, not to be contested in any suit except upon appeal in the case,..... 574  
may decree specific performance of written contracts for conveyance of land made by deceased persons, and persons subsequently put under guardianship — proceedings in such cases,..... 575  
may make rules, to be returned to, approved,

**PROBATE COURTS — continued.**

altered, or amended by, supreme court,..... 578  
judges may frame and issue necessary warrants,.... 578  
decrees to be in writing, and with certain other papers to be recorded,..... 578  
regularity of proceedings to be presumed after twenty years,..... 578  
orders of notice, and certain other official acts, may be done in vacation,..... 578  
may award costs in certain cases, and issue executions therefor,..... 578  
judges, when accountant is unable to attend court, may administer oath out of court, or authorize justice of the peace to do it; certificate, accounts, and vouchers to be returned,..... 578, 577  
all other oaths required of persons in relation to probate matters may be administered by justices of the peace,..... 577  
parties having business in, may select newspapers in which to have notices published,..... 577  
county to provide books and stationary for,..... 577  
register to prepare certain copies without charge,..... 577  
clerks in office of, not to be commissioners of insolvency, or dividers of estate of deceased persons, unless requested by parties,..... 577  
judges may keep order in their court and punish for contempt,..... 577  
Sessions of the court in the several counties,..... 577, 578, 579  
to be held at such places in the cities and towns as the judge orders,..... 577  
may be adjourned by judge or by register, in certain cases,..... 577  
not to be held unless registers, assistant registers, or register pro tempore, is present,..... 577  
Appeals may be had to supreme court in all cases,..... 415, 422, 548, 575, 576  
to be claimed, and notice given, within thirty days,..... 575  
to be entered at rule days of supreme court,.... 575  
reasons to be filed fourteen days before time of entry,..... 575  
omitted to be entered, may on petition within one year, be entered subsequently,..... 575  
if petitioner was out of United States at time of passing decree, he may within two years thereafter, and within three months after his return, petition for allowance of appeal,..... 572  
to be entered in supreme court on docket with equity cases,..... 575  
proceedings in probate court suspended after appeal,..... 575  
may be waived before entry,..... 575  
supreme court, in case of, may affirm former decrees, reverse the same in whole or in part, or pass any other order, and remit the case to the probate court,..... 575, 574  
proceedings when appellant fails to enter appeal,..... 576  
jury trial on such cases may be had in supreme court,..... 578  
(See *Estates of Deceased Persons, Administrators, Executors, Guardians, Trusts, Wills, &c.*)

**PROBATE COURTS—continued.****SPECIAL JURISDICTION OF JUDGES.**

Judges of, may commit lunatics to state lunatic hospitals, in counties other than Suffolk,.....	407
fees of, for committing and discharging lunatics,.....	408
may commit girls to State Industrial School, . . .	414
may commit boys to State Reform School, . . .	421
may order removal of lunatics in jails and houses of correction,...	878
may authorize arrests on meane process and execution in civil actions,.....	685, 686
examine, discharge, or commit poor debtors arrested,.....	685-640
may remove to hospitals poor debtors who are insane,.....	689, 640
(See <i>Judges of Probate and Insolvency.</i> )	

**PROCESS.**

civil, not to be served on Lord's day,.....	484
punishment for arrest under pretence of, &c.,.....	790

**PROFANE CURSING AND SWEARING.**

how punished,.....	819
prosecution to be commenced in twenty days,.....	819

**PROPERT.**

in declarations, need not be made,.....	654
---	-----

**PROHIBITION.**

writs of, may be issued by supreme court,.....	558
--	-----

**PROMISSORY NOTES.**

maturing on Sundays and public holidays, when payable,.....	298
when may be protested in such case,.....	298
payable on demand, when demand to be made to charge indorser, . . .	298
liability of indorsers of, . . .	298
makers of, to have same defence against indorsers as against payees,.....	298
grace not to be allowed on,.....	294
payable within this state on a day certain, grace to be allowed on, . . .	294
of less than five dollars, other than of banks, not to be issued and circulated as currency, under penalty,.....	810
forms of declarations, and answers in actions on,.....	668, 668
actions upon, witnessed, may be brought by payee or his executor, in twenty years,.....	777

**PROPRIETORS.**

of common fields and wharves, &c., in actions against, how process to be served, &c.,.....	622, 628
--	----------

**PROSECUTIONS.**

for criminal offences, not to bar civil actions, . . .	840
criminal, for certain misdemeanors, may be stayed, upon reparation to party injured and payment of costs, . . .	884, 889
such proceedings to bar civil action,.....	889, 840

**PROSTITUTION.**

abduction of unmarried woman for, how punished, . . .	817
prosecutions therefor limited to two years,.....	817
buildings, &c., resorted to for purposes of, deemed common nuisances, . . .	454
use of building for purposes of, to render lease void, . . .	454
penalty on landlord for letting building for purpose of,.....	454

**PROTEST.**

of bills of exchange, &c., maturing on Sunday or on a public holiday, to be made on the next preceding business day,.....	298
---	-----

**PROTEST—continued.**

making or procuring false, how punished,.....	296
fees of notaries public for,.....	76

**PROTESTANT EPISCOPAL CHURCH**

powers and duties of officers of,.....	218
--	-----

**PROVERS OF FIRE-ARMS.**

provisions concerning,...	300, 21
(See <i>Arms.</i> )	

**PROVINCE LANDS.**

limitation to suits for recovery of lands by commonwealth not to apply to,.....	78
---	----

**PROVINCETOWN.**

land in, ceded to United States, . . .	44, 45
lobster fishery on shores of, regulated, &c,.....	43

**PROVISIONS.**

what exempt from levy on execution, and from attachment,.....	624, 624
punishment for knowingly selling diseased and corrupted, without notice, . . .	623
fraudulently adulterating food or drink,.....	623, 623

**PROXIES.**

In banks, vote of stockholders by, . . .	304
form, execution, and filing of,.....	304
to be recorded,.....	304
to be valid for three months only from date,....	304
list of, to be read at meetings, . . .	304
not to be received by salaried officers, under penalty,.....	304
In insurance companies, how executed, used, &c.,.....	322, 328
In manufacturing companies, how executed, used, &c.,.....	327
In railroad companies, how executed, used, &c.,.....	329

**PUBLIC ADMINISTRATORS.**

one or more to be appointed by governor, &c., in each county,.....	496
when administration to be granted to, . . .	493, 496
when not to be granted to,.....	496
to be discharged when husband widow or heir	

<b>PUBLIC ADMINISTRATORS — continued.</b>	
to be notified in such case, and to appear for commonwealth,.....	487
upon death, removal, &c., of, accounts to be examined by another,.....	488
such other to be appointed administrator on all estates not administered,.....	488
neglecting duties, &c., district-attorneys to prosecute if there are no heirs,.....	488
money and personal property found on or near a dead body, when to be given to,.....	860
<b>PUBLIC AMUSEMENTS.</b>	
provisions concerning,.....	463, 464
<b>PUBLIC ASSEMBLIES.</b>	
penalty for disturbing,.....	820
<b>PUBLIC CONVEYANCES.</b>	
liability for careless management, &c., of,.....	794
<b>PUBLIC LANDS.</b>	
conveyances of, to be subject to approval of governor and council,.....	55, 139
<b>PUBLIC LIBRARIES. (See Libraries.)</b>	
provisions concerning establishment of,.....	208
<b>PUBLIC OFFICERS AND OFFICES.</b>	
<i>(See Officers and Offices.)</i>	
<b>PUBLIC PROPERTY.</b>	
who to have charge of,.....	55
magazines, munitions, &c., to be in custody of adjutant-general,.....	55
safe keeping of, at public expense,.....	55

<b>PUBLIC PROPERTY — continued.</b>	
tools and implements to be marked as,.....	55
unauthorised possession of, how punished,.....	55
<b>PUBLIC REPORTS AND DOCUMENTS.</b>	
annual, when to be made by certain public officers,.....	53
special, when may be made,.....	53
certain, to be laid before legislature in printed form,.....	53
when certain reports may be put in type,.....	54
number of, to be printed, and distribution thereof,.....	54
complete sets of public series of, to be furnished to towns,.....	54
penalty on officers neglecting to make reports, &c.,.....	54
<b>PUBLIC WORSHIP.</b>	
right and duty of,.....	14, 34
houses for, exempted from taxation,.....	71
punishment for disturbing assemblies met for,.....	819
<b>PUNISHMENT.</b>	
no law to be made subjecting to capital or infamous, (except in army or navy,) without trial by jury,.....	3, 15
cruel and unusual, not to be inflicted,.....	16
when not provided by statute, to be according to common usage,.....	844
may be commuted by governor,.....	855

Q.

<b>QUAKERS.</b>	
may affirm instead of swearing,.....	80, 83, 673
how exempted from enrolment in the militia,.....	98
overseers of monthly meetings of, to be body corporate to take and hold grants for use of meeting, &c.,.....	206
to manage, &c., property, and prosecute and defend actions concerning the same,.....	206
limitation of such grants, &c.,.....	206
marriages of, may be solemnized as heretofore practised,.....	530
<b>QUARANTINE.</b>	
may be established by towns,.....	192
may be established in another town with its assent,.....	192
by two or more towns, jointly,.....	192
of vessels, and regulations concerning, may be established by board of health,.....	192
regulations to extend to all persons and effects on board, &c.,.....	192
penalty for violation after notice,.....	192
vessels, when found, &c., may be removed to, by board of health,.....	192
expenses of, how and by whom to be paid,.....	192
penalty on seamen and passengers of infected vessel, &c., for refusal to answer on oath certain questions,.....	192
<b>QUARTERMASTER-GENERAL.</b>	
how appointed,.....	97
<b>QUESTIONS OF LAW.</b>	
arising in counties of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, and Suffolk, for supreme court, to be heard by court for commonwealth,.....	555, 556
in other counties, at terms of the court established therefor,.....	556

<b>QUESTIONS OF LAW — continued.</b>	
or by consent of parties, or order of court, in said court for commonwealth,.....	567
how raised, entered, heard, and determined, &c.,.....	554-557, 563, 568, 567
entry of, in supreme court, not to transfer cases but only the questions,.....	567
<i>(See Appeals, Exceptions.)</i>	
In equity cases before single judge, how may be reserved and reported to full court,.....	560
<i>(See Equity.)</i>	
<b>QUIETING TITLES.</b>	
of real estate, proceedings for,.....	696
<b>QUINTAL.</b>	
of fish, weight of,.....	264
<b>QUITCLAIM.</b>	
deed of,.....	466
<i>(See Deed.)</i>	
<b>QUO WARRANTO.</b>	
writ of, may be issued by supreme court,.....	553
who may apply for leave to file information in nature of,.....	744
when application may be made and heard,.....	744
hearing to be had summarily, and leave granted to file information upon probable cause,.....	744
in what county to be filed, and notice thereof,.....	744
after leave given, court may issue injunction,.....	744
attorney-general may intervene, and ask for judgment or forfeiture,.....	744
in such case, he shall have control,.....	744
complainant no longer responsible for costs,....	744
court to enter such judgment as the principles of the common law require,.....	744
when attorney-general does not intervene, judgment of forfeiture not to be entered,.....	744
form of judgment,.....	744



# INDEX.

## RAILROAD CORPORATIONS—continued.

- if not able to obtain such land, by agreement with owner, shall pay damages estimated, &c., by county commissioners,..... 352
- land, &c., without limits of road, not to be so taken without permission of owner, unless county commissioners prescribe limits, &c.,..... 352
- land taken, &c., for depot and station purposes, &c., not exempt from taxation,..... 352
- 7. DAMAGES.**
- corporation to pay all damages occasioned by laying out, &c., its road, or by taking land, &c.,..... 352, 355
- such damages to be estimated by county commissioners, as in laying out highways,..... 352
- application to be made for land, &c., before taking, &c.,..... 352
- either party, dissatisfied with commissioners' estimate, &c., may, within one year, apply for jury, &c.,..... 352
- upon such application, prevailing party to recover costs, and proceedings to be as provided for recovery of damages in laying out highways,..... 352
- but no jury to alter or reverse any order of commissioners in relation to construction and maintenance of embankment, drains, &c.,..... 352, 355
- owner of land in adjoining counties may apply to commissioners of either county,..... 352
- and either party may apply for jury, &c.,..... 352
- jury to be from same county as commissioners, and to estimate damage as though land lay in one county,..... 352
- guardians or trustees may release damages, &c.,..... 352
- damages to be assessed to person having different interests in land, as provided in other cases, &c.,..... 353
- to whom to be paid, &c.,..... 234, 235, 353
- mortgagors and mortgagees to have same rights, &c., as land owners,..... 353
- petitions for estimate of damages to state all mortgages known, &c.,..... 353
- mortgagors and mortgagees may join in such petition,..... 353
- notice to be given to all interested as mortgagors, &c., that they may appear and become parties, &c.,..... 353
- damages to be paid to satisfy mortgages when mortgagors, &c., petition or become parties, &c.,..... 353
- separate judgment to be entered for each mortgagee, to be held in trust, &c.,..... 353
- balance to be paid to mortgagor, &c.,..... 353
- application for damages for crossing private way by railroad to be made within year,..... 353
- for land, &c., taken, to be made within three years, unless suits are pending, &c.,..... 353
- provisions when suits are pending,..... 353
- if, upon application for damages, or jury, proceedings are quashed, &c., applicant may commence anew at any time within one year,..... 353, 354
- if requested, commissioners may require security of corporation for payment of damages and costs, &c.,..... 354
- upon petition of owner, &c., they may require of corporation further security, &c.,..... 354

## RAILROAD CORPORATIONS—continued.

- and all right of corporation to use land, &c., suspended security, &c.,.....
- upon award of damages, &c., against the commissioners, after jury has expired, warrants of distress to collect, &c.,.....
- and if corporation, for thirty days to satisfy the same, all &c., except to make survey, &c.,.....
- supreme judicial court may restrain from entering such land, &c., corporation may tender damages after have estimated them,.....
- if damages are not satisfactory, costs determined by jury,.....
- damages in Boston, to be estimated by aldermen,.....
- either party, if dissatisfied with estimate by mayor and aldermen, jury at next term of &c.,.....
- when awarded for land of married wife, posed of,.....
- 8. ALTERATION OF ROAD.**
- on what terms may vary direction in their prescribed limits land,.....
- liable to the owners of land taken, &c.,.....
- 9. CONSTRUCTION.**
- county commissioners may order corporation to construct, &c., embankments for security of owners, &c.,.....
- in case of neglect, supreme judicial court to compel performance, &c.,.....
- if corporation, for more than forty days notice of such neglect, have commenced the work, &c., estimated may maintain an action, &c.,.....
- to make, &c., fences upon railroad prior to April 17, 1841, has not received damages, &c.,.....
- to erect and maintain suitable fence length of road constructed to May 16, 1846, except a turnpike, &c.,.....
- to erect barriers, &c., to prevent entrance upon the road,.....
- penalty for neglect to erect fences, &c., supreme judicial court may compel corporation upon neglect, may restrain from crossing any turnpike to furnish plan of land taken to owners, proceeding to construct, &c.,.....
- and to fence land if requested, &c., upon demand of owner, within thirty days, taking, to furnish plan, &c., days,.....
- if plans, &c., are not furnished, corporation enter land, &c., except for &c.,.....
- 10. CROSSING HIGHWAYS.**
- turnpike road or other way not to be crossing,.....

## RAILROAD CORPORATIONS—continued.

to cross over or under turnpike, highway, or town way, &c., ..... 356  
 may raise or lower highway or town way, &c., ..... 356  
 before proceeding to cross, alter, or excavate, &c., to obtain decree from county commissioners prescribing what alterations may be made, &c., ..... 356  
 and before excavating, &c., to give security, &c.,... 356  
 upon application of mayor and aldermen or selectmen, the county commissioners may prescribe what alterations, &c., ..... 356  
 and may order the corporation to give security, &c.,... 356  
 if corporation has excavated without obtaining such decree, the supreme judicial court may, by injunction, restrain the corporation, &c., ..... 356  
 may raise or lower turnpike, &c., ..... 356, 357  
 but before making such alteration, to notify president or clerk of turnpike corporation, &c., ..... 356, 357  
 parties disagreeing as to alterations, either may appeal to county commissioners, &c., ..... 357  
 if corporation, &c., neglects to make alterations, proprietors may recover damages, ..... 357  
 mayor and aldermen or selectmen may request corporation to raise or lower turnpike at railroad crossing, ..... 357  
 and if corporation neglects, may apply to county commissioners, ..... 357  
 county commissioners may decide upon necessity of raising or lowering ways, ..... 357  
 mayor and aldermen to pay costs upon decision that alteration is not necessary, ..... 357  
 may carry decision into effect if corporation neglects, and recover against corporation all charges, &c., ..... 357  
 may alter the course of a highway or town way, obtaining decree of county commissioners, &c., .....  
 before granting decree, after notice to county commissioners to decide that it will not injure the way, .....  
 to pay all damages occasioned to private property, &c., .....  
 may, with consent, &c., alter course of a road, canal, &c., .....  
 turnpike road or other way may be laid as roads when authorized by county commissioners, &c., .....  
 expenses of constructing way at such crossing to be borne by owners of way, notice to be given to corporation by county commissioners before laying out way across &c., .....  
 commissioners may direct manner of crossing, &c., not permitting such crossing at a level unless public necessity requires it, .....  
 if such way pass over railroad, commissioners determine in what manner bridge constructed, .....  
 commissioners may authorize mayor and aldermen or selectmen to lay out way across road, &c., .....  
 may permit it to be laid upon a level road, &c., .....  
 the corporation shall, at their own expense, guard, &c., their rails, by pla

## RAILROAD CORPORATIONS—continued.

where road is crossed by turnpike, as to secure safe and easy passage across, ..... 356  
 shall establish additional safeguards at such crossing if required by commissioners, ..... 356, 357  
 shall keep in repair all bridges, &c., over or under any turnpike road, canal, highway, or other way, ..... 357  
 original jurisdiction of questions touching obstructions to turnpikes, &c., vested in county commissioners, ..... 357  
 supreme judicial court to have jurisdiction in equity, and may compel such corporations to raise or lower any turnpike, &c., and to comply with orders, &c., of commissioners, ..... 357

## 11. CROSSINGS IN PRIVATE LAYS.

in case of difference between owner of land and corporation as to place or manner of crossing, either party may apply to the commissioners, &c., ..... 358  
 commissioners may make order in relation thereto, &c., and as to costs, &c., ..... 358  
 may alter crossings deemed inconvenient by owner or corporation, upon application of either party, ..... 358  
 unless the corporation makes application, commissioners not to order corporation to construct or maintain crossing except where it is liable, &c., ..... 358  
 such application not to be proceeded with until applicant furnishes recognizance to county for payment of costs, &c., ..... 358

## 12. DAMAGES AT CROSSINGS.

corporation liable to towns, &c., for expenses incurred by neglect at crossings, ..... 359

# INDEX.

## RAILROAD CORPORATIONS—continued.

15. REGULATIONS FOR OPERATING ROAD.	
to provide one brakeman to every two cars in passenger train,.....	860
to the hindmost car of every freight train, under penalty,.....	860
to cause bells to be placed on locomotive engines, and to be rung before crossing ways, &c.,.....	860
sign-boards to be erected at crossings, &c.,.....	860
at travelled places, upon application by selectmen, &c., to commissioners, &c.,.....	860, 861
costs of application, by whom to be paid,.....	861
when shall also erect gates across their road, and station persons to open and close them,.....	861
may be required by county commissioners to station flagmen at crossings,.....	861
penalty on, and liability of, for neglecting so to place bells, boards, gates, &c.,.....	861
gate-keeper and flag-man for neglect of duty,.....	861
corporation liable in damages also for their neglect, &c.,.....	861, 862
gates at crossings may be altered by county commissioners,.....	862
locomotive engines of, to be stopped within five hundred feet from intersection with another railroad,.....	862
engines of, need stop only once for crossings within six hundred feet of each other,.....	862
penalty on, for loss of life of passenger by negligence of, or of their agents,.....	862
of any one not passenger or employee, by negligence of, or of their agents,.....	862
recoverable by indictment, to use of family, or heirs of deceased,.....	862
indictment to be prosecuted within one year after injury,.....	862
not to extend to case of person unlawfully walking, or being on railroad,.....	862
punishment of agent, &c., for negligence,.....	861, 862
to give notice to coroner of accidents attended with loss of life,.....	862
liable for damages caused by fire from their engines,.....	862
to have insurable interest in property exposed to fire from their engines,.....	862
16. PENALTIES FOR OBSTRUCTING ROAD, &c.	
penalty for walking or standing on track of, knowingly,.....	863
on, and liability of, persons for riding, driving, &c., beasts on road, after it is opened for use, without consent,.....	863
on persons by whose fault horses and other beasts are at large on road, after it is so opened,.....	863
for obstructing passage of engines or carriages, &c., on road of,.....	863
for attempting so to obstruct, &c.,.....	863
penalties accruing to, may be recovered by treasurer, in an action of tort,.....	863
17. ACCOMMODATIONS FOR PASSENGERS, &c.	
to furnish reasonable accommodations for passengers, under penalty,.....	863
checks to passengers for baggage, &c., when requested, under penalty, &c.,.....	863
how may establish tolls, and regulate conveyance and transportation,.....	863, 864

## RAILROAD CORPORATIONS—contd

penalty for fraudulent evasion, &c. fire,.....	
persons refusing to pay toll or fine, mand, not to be entitled &c.,.....	
18. RELATIONS OF CONNECTING	
freight on connecting roads to promptly and forwarded directions,.....	
corporations, whose roads unite, may make as to transportation,.....	
income from such contracts to be subject commonwealth to reduce to chase roads,.....	
required to allow use of their road by conditions authorized by legislature compensation and times of such use mined by commissioners supreme court, if parties agree,.....	
where roads terminate in same place, as depots, &c.,.....	
if parties cannot agree, commission pointed by supreme court, & compensation of such commissioners, & locomotive engines, &c., not belonging to be run thereon without corporation,.....	
19. BONDS AND MORTGAGES	
bonds may be issued by, to amount of by vote of stockholders,.....	
payable to bearer, &c., to be neg same manner, and to the same promissory notes,.....	
not to be issued without approval committee, &c.,.....	
binding, though sold below par, ... to be included in any subsequent mortgages of property of, powers an trustees entitled to poss der,.....	
annual meetings of creditors and secured by,.....	
election of trustees under,..... equity jurisdiction of supreme	
given to commonwealth, terms of,.....	
to be in full force, without being what property bound by,.....	
and bonds so given, directed to ed in counties through passes,.....	
20. RETURNS AND REPORTS.	
books of, to be at all times open, un to inspection of committee ture,.....	
annual reports to be made by directors of commonwealth, with on printed copies of same,.....	
contents of,.....	
to contain account of accidents, thereof,.....	
to be made before the first Wednesday, under penalty,.....	
if not full, directors to state reasons distribution of,.....	
one set of reports to be furnished	

**RAILROAD**

ap

state n

corporat

to be c

location

penalty

cars to

penalty  
provisi

annual

tim

per

for

sec

**RAILS.**

for pro

on or ac

on bridg

punish

**RAINSFO**

provisi

**RAMS.**

and be

penalty

**RAPE.**

not a be

ravishin

a fe

assault

**RATABLE**

census c

**REAL AN**

special

not to a

on deat

how to

not to b

writ of

tenants

autentic



**REAL AND MIXED ACTIONS—continued.**

if for tenant, demandant to pay before taking out execution for seisin,.....	604
demandant not to recover against tenant, &c., subsequent rents and profits, until he pay such balance,.....	604
if improvements exceed rents and profits accrued within six years, tenant chargeable with earlier rents, so far as to balance his claim,.....	604
demandant's right to maintain actions against third parties, for mesne profits and damages, not affected by above provisions,.....	604
when tenant claims for improvements, demandant may require that value of estate, without improvements, shall be determined,.....	604, 719
how and by whom such value shall be ascertained,.....	604
if judgment is for demandant, he may offer, on record, to relinquish to tenant for such value,.....	604
what time offer to be made,.....	604
if demandant relinquishes, tenant shall hold estate on paying such value,.....	604
how such payment shall be made, and demandant's right, if not made,.....	604, 606
provision for payment, and issuing of writ of seisin, in case of death of either party after judgment,.....	606
remedy, and proceedings of tenant and his assigns, if subsequently evicted by force of any title better than that of the original demandant,.....	606
when demandant claims a life estate only, and pays for improvements, provision for adjustment between him and reversioner,.....	606, 606
above provisions, as to rents and profits, improvements, and estimating value of premises, not apply to actions on mortgages,.....	606

**PETITIONS FOR SETTLEMENT OF TITLE.**

party in possession of land claiming freehold, on term of not less than ten years, may, on petition to supreme court, compel adverse claimant to bring action, or be barred of his title,.....	606
proceedings therein,.....	606

**OTHER REAL ACTIONS.**

Writ of dower,.....	186
For partition of lands,.....	606
Forcible entry and detainer,.....	707
For foreclosure and redemption of mortgages,.....	712
Informations for intrusions,.....	717

**REAL ESTATE.**

how construed,.....	51
what to include for purpose of taxation,.....	74
when taxable,.....	75
mortgage, to whom taxable,.....	75
of religious society, held as ministerial fund, when and to whom taxed,.....	76
conveyances of, by deed, how made, &c.,.....	465-467
record of,.....	154, 155
general rules of descent of,.....	474
subject to payment of debts of owner,.....	474, 476, 489
may be taken, held, transmitted, and conveyed by aliens,.....	478

**REAL ESTATE—continued.**

title to, not invalid on account of alienage of former owner,.....	478
title to, conveyed by commonwealth, not affected by such provisions,.....	478
when may be sold for payment of debts of deceased person,.....	489
taken on execution by executor, &c., to be deemed personal assets, &c.,.....	490
held by executor, &c., on mortgage or execution, may be sold for payment of debts, &c.,.....	490
if not so sold, how distributed,.....	490
executors, &c., chargeable with income of, if received,.....	496
sale of, by executors, administrators, and guardians, how licensed, made, &c.,.....	510-515
what liable to be sold in such cases,.....	511
including rights of entry, &c., may be taken on execution,.....	516, 517
no action to be brought on contract for sale of, unless such contract is in writing, &c.,.....	527
may be held, &c., by married woman, to her separate use, &c.,.....	537, 538
of married woman, how conveyed,.....	538
how conveyed, when she or her husband is under guardianship,.....	539
if husband is out of state, &c., how conveyed, &c.,.....	542
when taken for railroad, &c., damages for, how disposed of,.....	589
conveyance of encumbered, without disclosing the encumbrance, how punished,.....	802
penalty for selling and conveying land attached on mesne process without notice,.....	802, 808
how attached,.....	828
proceedings in levy of execution on,.....	517-521
mortgages on, provisions respecting redemption, foreclosure, &c.,.....	712-717
partition of,.....	698-706

**REAL ESTATE LYING IN COMMON.**

how proprietors may become a corporation,.....	879
justice of peace may call meeting, &c.,.....	879
notice of first meeting, how given,.....	879
organization of proprietors, &c.,.....	879, 880
moderator's powers, &c.,.....	880
clerk, treasurer, collector, &c., may be chosen,.....	879, 880
tenure of their office,.....	880
Clerk, to be sworn, and to record all votes, &c.,.....	880
Treasurer, to receive and pay out moneys, &c.,.....	880
Proprietors, may sue and be sued, &c.,.....	880
not to sue individually, and also as corporation, for the same injury,.....	880
may make by-laws, &c.,.....	880
by-laws, with penalties annexed, to be approved by county commissioners, in the county where the estate lies,.....	880
powers of, at legal meetings,.....	880
to vote according to shares of each,.....	880
may raise money by assessments, &c.,.....	880
shares of, may be sold to pay assessments, &c.,.....	880
notice of sale, how to be given, &c.,.....	880
how redeemed after sale,.....	880, 881
when proprietors may sell, &c.,.....	881
may, after division, hold meetings, and do all acts necessary to close their business,.....	881

**REAL ESTATE, &c. — continued.**

- how long after division they may act as a corporation,..... 381  
 records of, after final division, where to be deposited,..... 381

**RECEIVERS, &c.**

- may be appointed by supreme judicial court when charters of corporations expire, &c.,..... 388  
 powers and duties of, in such cases,..... 388, 389  
 Of rents and profits, may be appointed by supreme court in equity, in suits between copartners, joint tenants, and tenants in common,..... 559  
 Of goods, &c., known to be stolen, &c., how punished, . . . . . 801  
 effect of restitution of stolen property,..... 801  
 receiver may be tried before the thief,..... 801  
 indictment need not aver conviction of thief,.... 801  
 may be punished by police courts and trial justices,..... 570, 609  
 of embezzled property, knowing, &c.,..... 801  
 second convictions, and three convictions at same term,..... 801  
 common receivers, who to be deemed, and how punished, . . . . . 801

**RECOGNIZANCES.**

- to pay costs, on petition for highways, town ways, &c.,..... 222, 241  
 on appeal to jury in highway cases,..... 235  
 by town or city, how entered into,..... 159  
 by town, &c., need not be with sureties,..... 159  
 to prosecute an appeal in civil cases,..... 607, 708  
 of poor debtors, arrested on mesne process or execution, ..... 636, 638  
 remedy on such recognizances,..... 641  
 surrender of debtor by sureties on, how made,..... 641

**IN CRIMINAL CASES.**

- condition of, how to be framed,..... 884, 885  
 when may be taken by magistrate, at prisoner's request, without examination,..... 881, 882  
 on appeal, in cases of liquors adjudged forfeited, ..... 447

**RECOGNIZANCES — continued.**

- compelled forthwith to return the same, ..... 885  
 may be proceeded against by attachment, as for a contempt,..... 885  
 in what cases may be discharged, by magistrate who takes it, on satisfaction being made to the party injured,..... 884  
 order to discharge, in such case, to be filed in clerk's office before sitting of court,..... 884  
 default of appearance of person bound by, to be recorded, and process issued against him,..... 835  
 how surety in, may be discharged after default, by paying to clerk, &c.,..... 835  
 in suit on, on behalf of commonwealth, court may remit part or whole of penalty, 829, 835, 836  
 action on, not to be defeated by certain irregularities and defects of form,..... 836  
 judgment on, where penalty is forfeited to state, may be reviewed for any sufficient cause,..... 836  
 what court to grant, and mode of proceeding,..... 836  
 petition to state grounds relied on,..... 836  
 what notice to be given thereon,..... 836  
 if, on review, judgment is reversed, or given for less sum than has been paid, difference is to be paid to petitioner by the state,..... 836  
 what officer to make payment,..... 836  
 if, review not granted, nor judgment altered, state may have costs,..... 836  
 of witnesses,..... 838  
 to appear as a witness, binds a minor and married woman, ..... 838  
 to keep the peace,..... 827-829

**FOR DEBTS.**

- what debtors may bind themselves by,..... 770  
 before whom to be taken, and form of,..... 770, 771  
 before superior court, or the clerk,..... 770  
 before justice of the peace or police court, .... 771  
 recognizance to be attested and recorded,..... 771  
 not to be taken unless cause is known, . . . . . 771

**RECORD OF CONDUCT.**

of prisoners in jails and houses of correction,.....	864
in state prison,.....	875
to be submitted to governor and council, &c.,.....	875
effect of good conduct by such record,.....	864

**RECORDS.**

public, linen paper to be used for,.....	197
county commissioners, &c., to have books of, bound,.....	197
to cause records left incomplete by clerk, &c., to be made up, &c., by successor,.....	197, 198
to provide fire-proof rooms for, and for registries of deeds,.....	144, 198
selectmen, &c., to provide fire-proof safes for,.....	198
when county, city, or town, may be transcribed,....	198
transcripts of, made for towns, &c., to be compared and certified by clerks, &c.,.....	198
such transcripts, certified under oath, to have force of originals,.....	198
not to be removed from offices, except, &c.,.....	198
to be open to public inspection, &c.,.....	198
penalties for neglect of duty concerning, and defacing, altering, &c.,.....	199
of proprietors of townships and common lands, in whose custody to be,.....	199
of a religious society, &c., which has ceased to exist, in whose custody to be,.....	199
forgery, &c., of, how punished,.....	807

**REDELIVERY.**

of goods detained or secreted, suits for, may be brought in supreme court in equity,.....	559
---	-----

**REDEMPTION.**

Of mortgages on real estate,.....	712, 716
Of mortgages of personal property,.....	767
<i>(See Mortgages.)</i>	
Of lands set off on execution, may be made by debtor within one year after levy,.....	520
what payments to be made or tendered, and what allowances to be made on redeeming,.....	520
amount due for, may be ascertained, at expense of debtor, by three justices, whose certificate shall be conclusive,.....	520
manner of choosing justices in such case,....	520
debtor may make tender of sum adjudged to be due by such justices, though he has tendered a different sum,.....	520
may recover land by writ of entry, after tender of sum due, if creditor does not release,.....	520
suit in equity may be brought for, within one year after levy,.....	520
debtor to offer in his bill payment of sum due to creditor,.....	520
court to ascertain sum due, unless, &c., and require debtor to bring it into court,.....	520, 521
debtor, in complying with such order, to be entitled to judgment and execution for seisin,.....	521
costs in suit in equity for, how awarded,.....	521
of estates for life, when rents and profits are levied on, may be made at any time before debt is satisfied, on payment or tender of balance due,.....	521
proceedings in such case same as in redemption of other real estate,.....	521
Of mortgaged lands set off on execution, may be made by debtor within one year after levy,.....	521

**REDEMPTION — continued.**

proceedings in such case same as in redemption of other lands,.....	521
if creditor pays the mortgage, debtor may redeem from him as from mortgagee if no levy had been made,.....	521
if debtor does not redeem such mortgage, creditor to hold as assignee, free from right to redeem,.....	521
if debtor does not redeem right taken in execution, creditor to hold premises though debtor has redeemed mortgage,.....	521
Of rights of redeeming mortgage, when sold on execution, may be made by debtor within one year after sale,.....	522
payments to be made or tendered as in case of redemption of lands, &c.,.....	522
purchaser, on payment, to release to debtor,....	522
if purchaser pay mortgage, debtor may redeem it, and also the right of redemption sold under execution,.....	522
right, how recovered by debtor, if purchaser does not release or tender, &c.,.....	522, 523
In special cases, of rights of redeeming from levy, when taken on second execution, may be made by debtor, as in case of rights to redeem mortgaged land,.....	523
of land of deceased persons, taken on execution, may be made by executors, &c.,.....	523, 524
of land sold on execution in favor of state, may be made as in case of sale of right to redeem mortgaged land,.....	524
of premises sold under execution on judgment for damages awarded for flowage,.....	767

**REFEREES.**

corruption of, how punished,.....	818
acceptance of bribes by, how punished,.....	818
may make award concerning costs,.....	782
witnesses, how summoned before, &c.,.....	672, 678
may administer oaths to witnesses,.....	678
<i>(See Arbitrators.)</i>	

**REFORM SCHOOL, STATE.**

government of, vested in seven trustees,.....	418
Trustees of, how appointed, and tenure of office,.....	418
to receive no compensation, but to be allowed expenses,.....	418
to be a corporation to take and hold property of institution, &c.,.....	418
to have control of buildings, &c., at Westborough,.....	418
general powers and duties of,.....	418
to appoint superintendent and other officers, prescribe their duties, and fix their salaries,.....	418
duties of, as to instruction, discipline, &c., of boys,.....	419
may bind out boys till twenty-one years old,.....	419
duties of, as to selection of master in such cases,.....	419
one or more to visit school at least once in two weeks, &c.,.....	419
to make quarterly examinations,.....	419
abstract of quarterly reports to be laid before governor and council annually,.....	419
to make certain inventories annually,.....	55

**REFORM SCHOOL, &c. — continued.**

to examine superintendent's books once in six months,.....	419, 420
Treasurer of, to be appointed by governor and council for three years, .....	420
to give bond,.....	420
to submit detailed account of receipts, &c., to governor and council,.....	419
Superintendent of, to be appointed by trustees,.....	418
to give bond,.....	419
to have custody of boys, .....	419
to be constant resident at the institution, .....	419
to have charge of property, and keep books of account, .....	419
books, &c., of, to be open at all times to inspection of trustees, .....	419
to account to treasurer for all money received, &c.,.....	419
to keep a register of boys, &c., .....	420
to make contracts for the institution, .....	420
may sue and be sued on such contracts,.....	420
suit by or against, not to be abated by reason of vacancy in office, .....	420
Nautical branch of, to be vested in five trustees,.....	420
trustees, appointment, tenure of office, &c., .....	420
to be a corporation for certain purposes, .....	420
to have control of school-ship and other vessels, .....	420
to cause boys to be instructed in navigation and seamanship,.....	420
may send boys to sea, &c., .....	420
superintendent to be master of school-ship, &c., .....	420, 421
Commitments to, by whom and how made, &c., .....	421
proceedings on complaint, &c.,.....	421
form of warrant for,.....	421
variance from form, when not material,.....	421
judge to certify age and residence of boy in warrant, .....	421
service of warrant, .....	421, 422
duties of trial justice, &c., before whom boy is brought for trial, &c.,.....	42
proceedings on second commitment, .....	42
unfit subjects for, may be held for trial in superior court, .....	42
appeal on order for, to superior court,.....	42
fees of judges, &c., .....	42
may be ordered by superior court and supreme judicial court, when boys are convicted of certain offences,.....	42
proceedings in such cases,.....	42
term of, .....	42
discharge of boy from, to release him from all disabilities of sentence, .....	42
being sent to sea to operate as, .....	420, 42
inmates may be transferred from one institution to the other,.....	42
by whom to be transferred,.....	42
support of, by towns, and liability of kindred, .....	42

**REFORMED.**

certain convicts may be discharged when reformed,.....	84
when discharged, and committing the offence anew, how punished,.....	821, 84

**REGISTERS OF DEEDS.**

not to hold certain other offices,.....	30, 1
how and when chosen, and term of office,.....	70, 1

**REGISTERS OF DEEDS — continued.**

in case of failure to elect, county commissioners to issue warrant for new election, .....	72
vacancies in office of, how filled,.....	72, 153
to be sworn, and give bond, .....	163
to be resident of county or registry district, .....	72
return of votes for, .....	99-102
blanks to be furnished by county commissioners to towns, &c.,.....	167
special provisions for Suffolk county respecting the election of, .....	50, 61
may be removed from office for incapacity, &c., .....	153, 154
papers of, on removal, to be delivered to clerks of courts, &c., .....	154
to reside in place where office is kept, .....	154
to keep office open every day except Sundays and public holidays, .....	154
form of book for noting receipt of instruments, .....	154
to enter all instruments left for record in order in which they are received, .....	154
to note day, hour, and minute when received, .....	154
not to record deed without certificate of acknowledgment, &c.,.....	468
to record deeds legibly, and note interlineations and erasures,.....	154
to certify on instrument recorded, time of receipt, number of book, &c., .....	154
to keep two sets of indexes, .....	154
forms of such indexes, .....	154
to enter names of parties to instruments on indexes, within twenty-four hours of receipt,.....	154, 155
how to enter name of grantor when conveyance is made by sheriff, &c., .....	155
deeds of executors, &c., and partitions of land, how to be indexed,.....	155
to make annual returns to secretary of number of instruments recorded, fees, &c.,.....	155
form of such returns, .....	155
penalty for neglect to make such returns,.....	155
fees of for official service,.....	76
exempt from serving as jurors, .....	63
instruments required to be recorded in registry of deeds, to be recorded in registry of county or district where estate lies.....	124

**REGISTERS OF PROBATE, &c. — continued.**

to give bond to treasurer of the commonwealth, . . . . .	602
to take oaths prescribed by constitution, . . . . . 29, 38,	602
additional oath to be filed in probate office, . . . . .	602
to make return, annually, to secretary, of money received by them, . . . . .	129
penalty for neglect to make such return, . . . . .	129
may be removed by supreme judicial court, . . . . .	568
to receive and keep wills deposited in office, and give certificate thereof, . . . . .	477
may authorize suits on bonds in which judge is principal or surety, . . . . .	506
not to be of counsel in any matter pending in either of his courts, . . . . .	602
not to hold certain trusts, nor to be interested in the fees thereof, . . . . .	602
to have custody of records of probate courts, courts of insolvency, and of prior proceedings in insolvency, . . . . .	602
to perform such duties as are required by law or prescribed by judges, . . . . .	602
exempt from serving as jurors, . . . . .	679
from military duty, . . . . .	98
may, in certain cases, take depositions to perpetuate testimony, . . . . .	676
not to receive fees except in cases expressly provided for, . . . . .	604
to be registers of probate courts, and courts of insolvency, . . . . . 574, 581	
Assistant registers, to be appointed in counties of Essex, Middlesex, Norfolk, Suffolk, and Worcester, . . . . .	608
to be sworn and give bond, . . . . .	608
to perform duties under direction of register, and in case of his disability, or of a vacancy in office, to act as register, . . . . .	608
Temporary register, how appointed and sworn, . . . . .	608
to be paid by register, or if there is no register, from the treasury of the commonwealth, . . . . .	604
Salaries of registers and assistant registers in the several counties, . . . . .	608
(See <i>Insolvency, Probate Courts.</i> )	

**REGISTRARS.**

may be chosen in cities and towns of more than ten thousand inhabitants, . . . . .	170
to be sworn, . . . . .	170
duties of, in relation to registry, &c., of births, marriages, and deaths, same as those of town clerks, . . . . .	170
to issue certificates of intention of marriage to parties, . . . . .	529
penalty on, for issuing certificate to minors in certain cases, . . . . .	529
may require affidavit of age of parties applying for certificates, . . . . .	529

**REGISTRY AND RETURNS.**

of births, marriages, and deaths, . . . . . 168-170	
(See <i>Births, Marriages, Deaths.</i> )	

**RELEASE. (See *Deed.*)**

deed of, . . . . .	466
--------------------	-----

**RELIGIOUS ASSOCIATIONS.**

seven or more persons to be bodies corporate for religious purposes, &c., . . . . .	207
purpose and location, to be specified in articles, . . . . .	207
to have usual corporate powers, . . . . .	207
may hold real and personal property not exceeding one hundred thousand dollars, . . . . .	207
estate of, not exempted from taxation, when used for other purposes, . . . . .	207
(See <i>Parishes and Religious Societies.</i> )	

**RELIGIOUS FREEDOM.**

established, . . . . .	84
------------------------	----

**RELIGIOUS SOCIETIES.**(See *Parishes and Religious Societies.*)**RELIGIOUS WORSHIP.**

disturbing, how punished, . . . . .	819
-------------------------------------	-----

**REMAINDERS AND REVERSIONS.**

expectant on estates tail, when and how barred, . . . . .	466
contingent, when estate may be sold, &c., subject to, . . . . . 472, 473	
provisions relating to cutting trees on woodland, subject to, . . . . .	473
owners of, liable to tenants for life for sums paid for improvements, on recovery of premises in real actions, . . . . .	696
how amount of such liability may be ascertained if parties do not agree, . . . . .	696
rights and remedies of, in such case, after termination of life estate, . . . . .	696
may maintain action for waste, . . . . .	709
not entitled to partition, except in certain special cases, . . . . . 699, 706	
may have partition notwithstanding existence of lease, . . . . .	705
how, when remainders are limited to persons not in being, . . . . .	706
when right of entry or action for estate in, accrues, . . . . .	775
limitations of such rights, . . . . . 775, 776	
estates in, barred, when tenant's right of entry or action is barred, . . . . .	776

**REMOVAL OF ACTIONS.**

from superior to supreme court, by consent of parties or upon affidavit, how, . . . . .	562
from justices of the peace, &c., to superior court, where title to real estate is in question, &c., . . . . . 606, 781	

**REMOVAL FROM OFFICE.**

of judicial officers, on address of legislature, . . . . .	27
of militia officers, . . . . . 32, 100	
of executors, guardians, &c., for insanity, &c., . . . . .	508

**REMOVAL OF PAUPERS.**

to town of their settlement, . . . . .	394
--	-----

**REMOVAL OF PRISONERS.**

when may be made by sheriff, from one jail to another, . . . . .	867
when and how to lunatic hospital, . . . . . 412, 878	
in case of pestilence, . . . . .	864

**RENT.**

due from land demise for any estate of freehold, or for years, to be paid by person in possession in proportion to land held, . . . . .	471
tenants at sufferance, liable for, . . . . .	471
how recovered in such cases, &c., . . . . .	471
action for, may be brought by or against executors, &c., for arrears accrued in lifetime of deceased, . . . . .	471
provisions not to impair other legal remedies for recovery of, by landlords, . . . . .	472
of dwelling-house occupied by debtor and his family to be considered claim for necessities, . . . . .	472
accruing after levy on the reversion, to be paid by lessee to judgment creditor, . . . . .	518
how apportioned, when part of reversion is levied on, . . . . .	518

**RENTS AND PROFITS.**

when may be sold on warrant of distress for taxes, . . . . .	84
how execution may be levied on, . . . . .	518
how recovered in writ of entry, . . . . .	668

REN

W

h

n

h

REP.

P

REP.

o

u

REP.

C

a

v

h

o

t

t

v

t

v

j

.

**REPLEVIN** — *continued.*

may be sued out in behalf of plaintiff without express authority,.....	740
such person may be required to give security for payment of damages and costs that may be rendered against the plaintiff,.....	740
to whom to be directed, and by whom served,.....	739
form of writ,.....	739
shall not deliver from restraint unless bond be given,.....	739
bond, how to be returned,.....	739
officer serving the writ to be responsible for sufficiency of sureties on the bond,.....	739
if plaintiff is discharged, he may recover costs,.....	739
defendant to recover costs and damages if plaintiff does not sustain action,.....	739
when to have judgment for redelivery of plaintiff's body,.....	739
if he has secreted plaintiff's body, capias to issue to take,.....	740
may deny return charging him with secreting, &c.,.....	740
if guilty of secreting, to be committed,.....	740
term of commitment,.....	740
proceedings, where plaintiff's body is produced by defendant after a return of secreting, &c.,.....	740
appeal lies to supreme judicial court by either party, as in civil actions,.....	740
whole case carried up on appeal,.....	740
parties to, may be described where their names are not known,.....	740

**REPLICATION.** (*See Pleadings.*)

not required after answer, except by order of court on motion of defendant,.....	656
may be made to the answer by plaintiff, if he pleases, at any time before trial,.....	656
to state specifically any facts in reply to new matter in answer,.....	656
may raise an issue of law by demurrer,.....	656, 657
may allege facts occurring after suit brought,.....	657
trial not to be delayed for want of, unless by order of court,.....	661
supplemental may be made by leave of court,.....	657
order allowing, may be made in or out of court, and in any county,.....	660
form of,.....	669

**REPORTER.**

of decisions of the supreme court to continue in office,.....	616
to be appointed by governor and council, and removable at their pleasure,.....	616
to attend personally all law terms, and terms for capital trials, of supreme court, and make report of decisions,.....	617
to publish reports annually; and all cases argued before first day of September to be published in ninety days,.....	617
to publish opinions contained in records and transcripts, if no further opinions are written out within sixty days,.....	654
to report cases more or less at large, according to his discretion,.....	617
when cases are determined at any other time than at a law term, court to communicate opinion to reporter,.....	617
when absent, some person to be deputed by him, or be appointed by court,.....	617
compensation of,.....	617

**REPORTS.**

books of, of cases adjudged in other states, admissible evidence of their laws,.....	679
--	-----

**REPORTS** — *continued.*

of auditor, to be prima facie evidence,.....	
of masters in chancery and auditors, sums accorded by, to bear interest,.....	
of questions of law by single judge of supreme court to full court,.....	
arising in equity cases, how made to full court,.....	
of evidence taken before single judge in equity cases, how required, &c.,.....	
of questions of law, may, after verdict, be made to supreme court,.....	
in criminal cases, where important and doubtful questions of law arise, may be made to judge, if defendant after conviction desires or requests it,.....	
further proceedings to be then stayed,.....	
defendant to recognize for his appearance at the supreme judicial court,.....	
proceedings, if he fails, to recognize,.....	
power and duty of the court to act on such reports,.....	
party may have his writ of error for defect of record,.....	
Of public officers, boards, and institutions, except, &c., to include year ending September thirtieth, and be submitted to secretary on or before October fifteenth annually,.....	
and, with annual abstracts prepared by secretary, to be laid before legislature on first Wednesday of January,.....	
of certain public officers, may be put in type previous to first Wednesday in January,.....	
what to be styled "public series,".....	
special, to be made when public interest requires,.....	
of board of education, number to be printed and distribution of,.....	
of board of agriculture, number to be printed and distribution of,.....	
number of, may be increased by secretary, if public interest requires,.....	
of railroad corporations, to be filed in separate complete sets,.....	
to whom furnished,.....	
public series, only, to be furnished libraries &c.,.....	
to be furnished to towns,.....	
penalty for neglect in making, &c.,.....	
<b>REPRESENTATION.</b>	
concerning character, &c., to furnish no cause of action, unless in writing,.....	
of credit, with intention to defraud, must be in writing,.....	
<b>REPRESENTATIVES.</b>	
right of the people to instruct,.....	
in general court, by whom and when chosen	21, 34-36, &
travelling expenses of, paid from state treasury,.....	
qualifications of,.....	21, &
how far privileged from arrest,.....	
exempted from serving as jurors,.....	
oath of,.....	
certain officers not to be,.....	
number and apportionment of,.....	38, &
districts for choice of, how constituted,.....	
manner of conducting elections of,.....	
proceedings in case of failure to elect,.....	
certificates of election, by whom made,.....	
duplicates to be made, one transmitted to	

**REPRESENTATIVES—continued.**

secretary, and one delivered by constable, &c., to person elected,.....	65, 66
form of certificate, .....	66
as members of committees, may administer oaths to witnesses, .....	49
not eligible to office created during their term of service, except by vote of the peo- ple,.....	49

**House of.**

may impose fines on towns that neglect to return members, .....	21
the grand inquest of the commonwealth,....	21
to originate all money bills, .....	21
may adjourn, not exceeding two days,.....	21
one hundred members of, a quorum, .....	22, 89
judge of returns, elections, and qualifications of its members, .....	23
to choose speaker and appoint its own officers,.....	23
to establish rules of proceedings, .....	22
may punish for contempt, and threatening or as- saulting members, &c.,.....	22
cases where rights and privileges of, are concerned, how tried,.....	23
when may require opinions of justices of supreme judicial court,.....	27
organisation of, .....	47
secretary to make list of persons returned to, and deliver same to sergeant-at-arms, .....	47
to transmit certificates of election and list of members to, .....	47
those persons only whose names are on list to be admitted to seats, unless admitted by house,.....	47
when and by whom to be called to order,.....	47
compensation and mileage of members of, when and how paid, .....	48
deduction to be made for absences,.....	48
doorkeepers, messengers, and pages, how appoint- ed, .....	133, 134
compensation of doorkeepers, .....	40
books, &c., except, &c., not bers of, at charge of not to sit for transaction of or tain public holiday proceedings in case of vacancy Speaker of, compensation, .. to issue precept for ne vacancy, .....	
to approve accounts of ex order of house,....	
Clerk of, to act as clerk of su cessor is chosen, ..	
may appoint deputy and oath of, and of deputy an salary of, ..	
to make index and dupli to certify attendance of members, .....	
to have custody of jour copies certified by, to be	

**REPRESENTATIVES IN CO**

to be apportioned among the compensation, privileges, of,.....	
districts for choice of,.....	
when chosen,.....	
return of votes for,.....	
proceedings in case of failure in case of vacancy,....	
(See Constitution of th	

**RESCUE.**

of person arrested by order of senate or house of representatives, how punishable, .....	22
of persons from custody, how punishable,.....	312, 378
of cattle distrained or impounded, action, &c., for, .....	186

**RESERVOIRS.**

punishment for wilful, &c., injury to,.....	304
wilful or malicious corrupting or injuring,.....	305
poisoning, how punished,.....	794

**RESOLVES, (see Bills and Resolves, Laws.)**

17, 18, 22, 49

**RESPONDENTIA.**

recording not necessary to validity of contract of, .....	767
how proved in insolvency proceedings,.....	584

**RETAILERS.**

not to give credit to students, &c., under penalties, &c.,.....	657
--	-----

**RETURNS.**

of writs,.....	612
of executions,.....	657
when issued for possession of real estate, to be first recorded,.....	690
of bail bonds, .....	642
of bonds taken when goods attached and delivered to defendant or part owner, .....	629, 630
of bonds in action of replevin,.....	720, 731

**REVENUE.**

provisions of United States constitution concern- ing, .....	3-5
---	-----

**REVIEW.**

writ of, may be sued out in cases wherein trial by jury is waived, as in other cases, .....	661
of final judgments, allowed as of right, only in case of default of a defendant, who was out of the state,.....	745
writ of, may be sued out, in such case, at any time within a year after judgment,.....	745
may be granted, in such case, by supreme	



**REVIEW — continued.**

writ of, how to be sued out, form of, and how be served,.....	747
when sued out by original plaintiff, defendant's property may be attached,.....	748
of the pleadings, trial, evidence, judgment, and costs,.....	747, 748
when amount of former judgment is reduced, original defendant to have execution for the difference, with his costs,.....	748
or, in such case, if former judgment be not satisfied, one judgment may be set off against the other, and execution issue for the balance,.....	748
when amount of former judgment is increased, original plaintiff to have judgment and execution for the excess,.....	748
in actions of replevin, and wherever a set-off is filed, original defendant to be regarded, as to foregoing provisions, like a plaintiff in other actions,.....	748
attachments and bail in original suit not held to satisfy judgments on review,.....	748
of judgment on recognizance where penalty is forfeited,.....	886
for what cause and mode of procedure,.....	886
petition for, and notice thereof,.....	886
if judgment is reversed, or for less sum, difference to be paid to petitioner,.....	886
by whom to be paid,.....	886
if review not granted, nor judgment altered, court may award costs to commonwealth,.....	886
<b>REVISED STATUTES.</b>	
repeal of,.....	881
<b>REWARDS.</b>	
governor may offer and pay, not exceeding one thousand dollars, for the apprehension, &c., of certain convicts, &c., escaped from prison, or those charged with high crime,.....	881
may draw warrant on treasury for such payment,.....	881
mayor and aldermen, or selectmen, may offer, &c., not exceeding five hundred dollars, for arresting and securing, &c.,.....	881
how such reward is to be paid,.....	881
proceedings where more than one claimant appears,.....	881
decision of, &c., to be final,.....	881
<b>RIGHTS.</b>	
declaration of,.....	14
natural and essential, of all men,.....	14
<b>RIOTS.</b>	
and tumults, how to be suppressed,.....	815
neglect or refusing aid to suppress, how punished,.....	815
penalty for neglect of duty,.....	815
may be suppressed by force,.....	110, 111, 815
proceedings in calling out an armed force,.....	815, 816
whose orders such force shall obey,.....	816
persons aiding to suppress, held guiltless,.....	816
rioters responsible for injuries to those aiding to suppress,.....	816
towns responsible for property destroyed or injured by persons riotously assembled,.....	816
may recover the same from the offenders,.....	816
<b>ROADS.</b>	
persons meeting on, with carriages, &c., to turn to the right,.....	423

**ROADS — continued.**

passing another carriage, travelling the same way, to turn to the left,.....	423
driver of leading carriage on, not to wilfully obstruct,.....	423
sleighs not to be used on, without bells,.....	423
penalties for violations of these provisions,.....	423
complaint for such violations to be made within three months,.....	423
these provisions not to apply to horse railroads,.....	423
To swamps, construction of, authorized,.....	752
petition for improvements to be filed with commissioners,.....	752
contents of, and bond for expenses,.....	752, 753
what notice to be given thereof,.....	753
duties and powers of commissioners,.....	753
appeal from the decisions of the commissioners,.....	753
where the premises are in one town or city, petition may be made to selectmen, &c.,.....	753
repairs of such improvements, how to be made,.....	753
selectmen to proceed as provided for commissioners,.....	753
fees of selectmen, &c.,.....	753
appeal from selectmen to county commissioners,.....	753
proceedings on such appeal,.....	753
punishment for opening, through burial grounds without consent,.....	822
(See Highways.)	
<b>ROBBERY.</b>	
robber being armed with dangerous weapon, with intent, &c., how punished,.....	798
by force and violence, not being so armed,.....	798
<b>ROCHESTER.</b>	
land in, ceded to United States,.....	45
<b>ROCKETS.</b>	
penalty for selling without license,.....	460
for firing without license,.....	460
<b>ROGUES.</b>	
how to be arrested, secured, and punished,.....	820, 821
<b>RULE DAYS.</b>	
to be established by supreme court for transaction of equity business,.....	560
probate appeals to be entered at,.....	575
<b>RULES.</b>	
of court may be made by	
Supreme court, for conducting business, and regulating practice in equity,.....	561
for reporting oral testimony before single judge in equity cases for use of full court on appeal,.....	561
for settling the truth of exceptions alleged and not allowed,.....	567
regulating changes in the forms of writs in all courts,.....	622
Supreme and superior courts respectively, for regulating the practice, and conducting of the business of such courts,.....	566
various purposes for which such rules may be made,.....	566
respecting times and places of hearing motions at chambers, notice, and other matters respecting interlocutory orders, &c.,.....	660
as to issuing commissions in term time or vacation, filing interrogatories, &c., for taking depositions out of the state,.....	675
respecting time and manner of opening, filing, and keeping, &c., of depositions,.....	675
Police courts, for the orderly and uniform	

**RULES — continued.**

- conducting of the business of the courts, ..... 571, 573
- the justices of the police court of Boston may also make rules for arranging, equalising, &c., business in their court, ..... 573
- Probate courts, the several judges of, may make rules, and shall return a statement thereof to supreme court as soon as made, ..... 576
- supreme court may alter and amend same, or make further rules to secure uniformity, &c., ..... 576

**RULES — continued.**

- Courts of insolvency, judges of, or a majority, may make rules, which shall be submitted to supreme court for approval, amendment, &c., ..... 581
- supreme court may in all cases make general rules for, to maintain regular and uniform proceedings, ..... 582
- RUNAWAYS.**
- how may be treated, ..... 580, 581
- RYE.**
- standard weight of bushel of, ..... 585

**S.**

**SABBATH, (see Lord's Day),** ..... 434, 435

**SABBATH SCHOOL.**

- may be maintained in state prison, ..... 575

**SALARIES.**

- of public officers, when and how payable from the treasury, ..... 140
- (See titles of the several officers.)

**SALE OF LANDS BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.****I. BY EXECUTORS AND ADMINISTRATORS.**

- For payment of debts, may be made, if personal estate insufficient, ..... 489, 510
- license for, may be granted by supreme judicial court, superior court, or probate court, ..... 510
- petition for, by executor, &c., and what to contain, ..... 510
- notice of petition for, to be given to all parties interested, ..... 510
- notice may be dispensed with, if all parties in-

**SALE OF LANDS, &c. — continued.**

- affidavit of, filed and recorded, to be evidence thereof, ..... 511
- to be by public auction, and may be adjourned, ..... 511
- notice of adjournment of, how given, ..... 511
- For payment of legacies, may be made when personal estate insufficient, ..... 511, 512
- By foreign executor and administrator, may be made in this state, on filing copy of appointment, &c., ..... 512
- each executor, &c., if not bound in place where appointed, to give bond to account for proceeds, &c., ..... 512
- to give further bond to account for surplus, after paying debts, &c., if more than sufficient is sold, ..... 512
- to be sworn, and to give notice, &c., as other executors, &c., ..... 512
- all proceedings by, to be had in court for county where copy of appointment is first filed, ..... 514

of

no

pe

wi

wt

lin

ce

no

**SALE OF LANDS, &c. — continued.**

such guardian, if not bound in place where appointed, to give bond before sale to account for proceeds, &c.,	514
to give further bond to account for surplus, after paying debts, &c., if more than sufficient is sold,	514
to give additional bond, if sale is made for maintenance or investment,	514
all proceedings by, to be had where copy of appointment is first filed,	514
licenses for, may be granted by supreme judicial court, superior court, and probate courts,	514
not to be granted, except to guardians of minors, without assent of overseers of poor,	514
to continue in force for one year only,	515
not to be granted until notice to parties interested,	514
who entitled to such notice,	514
oath to be taken by guardian before fixing time of sale, &c.,	514
<b>III. PROVISIONS COMMON TO SALES BY EXECUTORS, &amp;c., AND GUARDIANS.</b>	
proceedings by foreign executor, &c., to be had in court for county where copy of appointment is first filed,	514
licenses for, by whom and how granted,	514, 710
not to be in force more than one year, except, &c.,	515
surplus of proceeds of, after settlement of accounts, to be considered real estate,	515
when objection is made to license for, how costs to be awarded,	515
limitation of actions for recovery of lands sold by executor, &c.,	515
requisites of, as against heirs of deceased, and ward, and those claiming under him,	515
as against persons claiming adversely to heir or ward,	515
persons making, may be examined on oath as to sales,	515
damages caused by neglect or misconduct of those making, how recovered,	515, 516
<b>SALEM.</b>	
harbor of, penalty for boarding vessels in, without leave, except by pilot, &c.,	290
what to be deemed limits of, for certain purposes,	290
<b>SALMON.</b>	
provisions concerning,	261, 262
<b>SALT.</b>	
standard weight of bushel of, to be seventy pounds,	278
mean weight, how to be ascertained,	278
penalty for selling without ascertaining weight,	278
when these provisions not to apply,	278
sancoty provisions concerning measures for,	286
<b>SANCOTY HEAD.</b>	
land at, ceded to United States,	45
<b>SAND.</b>	
penalty for digging, &c., without license,	805
<b>SANDWICH.</b>	
land in, ceded to United States,	45
provisions for regulation of fisheries in,	432
<b>SANDY NECK.</b>	
land on, ceded to United States,	44
<b>SANDY POINT.</b>	
in Nantucket, lighthouse on, ceded to United States,	44

**SAVINGS BANKS. (See Banks.)**

when charged as trustees, and there is doubt as to identity of defendant, may have bond of plaintiff,	724
general provisions respecting,	816-818

**SCHOLARSHIPS.**

state, forty-eight established,	218
arrangement of sections and classes for,	214
candidates for, how recommended, and how and when selected,	214
qualifications of,	214
deficiency in number of, how supplied,	214
college, how selected,	214
vacancies in, how filled,	214
scholar, after leaving college, may attend normal school,	214
allowances to, at college and normal school,	214
to teach in public schools the same term of time he has received aid, or refund,	214, 215
appropriations for,	215

**SCHOOLS.**

money raised for, by taxation, or appropriated by state, not to be applied to sectarian schools,	88
money for support of, may be granted by towns,	158
to be kept six months in each year in every town,	215
all children within commonwealth may attend, in place of their residence,	228
branches to be taught in,	215
day or evening, may be established for persons over fifteen years of age,	216
school committee to have superintendence of such schools, &c.,	216
female assistants to be employed in, when averaging fifty scholars, unless, &c.,	216
attendance at, to be encouraged by ministers of the gospel, town officers, &c.,	217
towns to raise money for, to be assessed, &c., like other town taxes,	158, 217
funds of corporations for support of, to remain as heretofore,	217
furniture by town for neglect to raise money or choose school committee,	217
three fourths of, to be appropriated for schools in town,	217
examination of, and visits to, by committee,	218
Bible to be read in, daily,	218
sectarian books to be excluded from,	218
provisions respecting, in towns, to apply to cities, unless, &c.,	220
wilful disturbance of, how punished,	820
High, to be kept in towns of five hundred families,	215
may be established in every town,	215
school committees to have like powers, &c., concerning, as prudential committees in districts,	219
admission to, how regulated,	228
branches to be taught in,	215, 216
number and qualifications of scholars to be admitted to, determined by committee,	228
to be kept ten months in each year,	216
location of, to be determined at annual town meeting,	216
qualifications of teachers of, in towns of four thousand inhabitants,	216
may be established by two adjacent towns having less than five hundred families each,	216
committee, location, and apportionment of expenses of, in such case,	216



**SCHOOL COMMITTEE—continued.**

and to specify appropriation of the town's share of income of a school fund,.....	227
to make a detailed report, annually, of the condition of schools, with suggestions, &c.,.....	227
to cause such report to be printed for use of inhabitants of town,.....	227
to transmit two copies to secretary of board of education,.....	227
and deposit a copy with town clerk,.....	227
chairman and secretary of, in certain cases, may sign certificate of returns, &c.,.....	227
to inquire into cases of neglect of parents, &c., to send children to school,.....	228
not to allow children to attend school until vaccinated,.....	229
to prosecute owners, &c., of manufacturing establishments for employing children who do not attend school according to law,.....	230

**SCHOOL DISTRICTS.**

towns may be divided into,.....	221
not to be changed oftener than once in ten years,...	221
to be corporations, for certain purposes,.....	221
property of, exempt from taxation,.....	74
may be abolished by towns,.....	221
when abolished, houses, lands, &c., how disposed of,.....	221
towns to vote on abolition of, in 1868, and every third year thereafter,.....	221
secretary to notify selectmen when towns must vote on abolition of,.....	221
when abolished, corporate powers to continue, for certain purposes,.....	221
school committee may establish schools in, if districts neglect or refuse,.....	222
meetings in, how called and warned,.....	222
may prescribe mode of calling and warning meetings,.....	222
may fix site of school-houses,.....	223
such site to be determined by selectmen, if district cannot determine,.....	223
penalty on, for not providing school-house,.....	223
neglecting to organize, school committee may provide school-houses, &c.,.....	224
may raise money for school-houses and land, and for necessary articles for use of schools,.....	222, 223
liable for illegality in proceedings in relation to raising money by tax,.....	222
taxes in, how, and on whom, &c., to be assessed, and how collected,.....	223, 224
money raised in, how to be applied,.....	224
if district refuse to raise, town may order it,....	224
and may empower selectmen, &c., to apply the same,.....	224
duties, compensation, &c., of assessors treasurers, and collectors in matters relating to,.....	224
actions by and against, where to be brought,.....	621
civil process against, how served,.....	622, 623
Prudential committee of, how to be chosen,.....	221, 222
general duties of,.....	222
may contract with teachers, when town so determines,.....	218, 222
may consist of three, when authorized to contract with teachers,.....	222
if not chosen, duties of, to be performed by school committee,.....	222
in union districts,.....	225

**SCHOOL DISTRICTS—continued.**

in districts formed by contiguous districts in adjoining towns,.....	2
Clerks of, to be chosen and sworn,.....	2
duties of,.....	2
to hold office till successors are qualified,.....	2
liable only for want of integrity,.....	2

**UNION DISTRICTS.**

Union districts may be formed by contiguous districts, by two-thirds vote, for benefit of older children,.....	2
meetings of, how called, &c.,.....	224, 2
location of school-house in,.....	2
clerk to be chosen by ballot and sworn,.....	2
to hold office until successor is qualified,.....	2
assessments in, how made,.....	2
prudential committees of, how constituted,.....	2
powers and duties of,.....	2
schools required by law to be maintained in districts composing,.....	2
powers and duties of school committee in,.....	2

**CONTIGUOUS DISTRICTS IN ADJOINING TOWNS.**

Contiguous districts in adjoining towns may unite,.....	2
terms of union,.....	2
meetings, how called, &c.,.....	2
prudential committee to be chosen, &c.,.....	2
powers of,.....	2
to determine proportion of money to be paid by inhabitants of each town,.....	225, 2
clerk to certify votes to raise money to assessors of each town,.....	2
taxes to be assessed as in other school districts,....	2
school committees of each town to officiate in turn,.....	2

**SCHOOL FUNDS.**

how to be invested,.....	2
income of, only, to be used,.....	2
how to be appropriated,.....	2
how and by whom apportioned, and distributed among towns for public schools,.....	2
not to be allowed to towns that neglect to make returns or raise certain sums for schools,.....	212, 2
how to be applied by towns when received,....	2
appropriations from, for schools among Indians,.....	2
account of such appropriations to be rendered annually to governor and council,.....	2
appropriations from, for state scholarships,....	2
Indian, income of, how to be applied,.....	2
Todd normal school fund, income how to be applied,.....	2

**SCHOOL-HOUSES.**

in towns not districted, to be maintained by towns,.....	2
to be kept in good order by school committee, unless towns otherwise direct,.....	2
use of, to be under charge of school committee in such towns,.....	2
location of, to be determined by towns,.....	2
land, not exceeding eighty square rods, may be taken by selectmen for,.....	2
proceedings in such case,.....	2
owner of land taken for, may have complaint tried by jury,.....	2
proceedings as in cases of damage by laying out highways,.....	2
damages and costs, in such cases,.....	2

**SCHOOL-HOUSES — continued.**

- land to revert to owner upon discontinuance of school for one year,..... 220
- location of, for high schools, to be determined by towns at annual meeting,..... 216
- in union high school district, to be determined by committee,..... 216
- districts may raise money for, fix site, &c., . . . 222, 223
- selectmen to determine site in certain cases, . . . . 223
- may be provided by towns at common expense,..... 223
- may be provided by school committee in districts neglecting to organize, . . . . . 224
- penalty on district for not providing, . . . . . 223
- and furniture, wilful, &c., injury to, how punished,..... 308

**SCHOOL REGISTERS.**

- to be sent by secretary of board of education to town clerks, . . . . . 211
- to be delivered by town clerk to school committee, . . . . . 226
- to be kept in all public schools, . . . . . 227, 228
- to be returned by teachers to school committee,..... 228
- if not properly kept, completed, and returned, teacher not entitled to payment,..... 228

**SCHOOL RETURNS.**

- blanks for, to be sent by secretary of board of education to town clerks,..... 211, 226
- number of children between five and fifteen years of age to be ascertained and returned to school committee by assessors, . . . . . 226
- number so returned, with sums appropriated for schools, to be certified under oath by school committee,..... 226
- form of certificate, . . . . . 226
- to be transmitted to secretary of board of education, . . . . . 226, 227
- may be signed by chairman and secretary of committee in certain cases, . . . . . 227
- to contain statement of appropriation of funds

if not t

town c

if info

may be

when s

when n

if mail

**SCIRE F.**

writ of

may b

wi

may be

may b

**SCIRE FACIAS — continued.**

- against former executor or administrator, and proceedings therein,..... 622
- to be indorsed before entry in certain cases, . . . . 622
- may be brought on judgments recovered for penalty of a bond, covenant, or agreement, when there are subsequent breaches,..... 626
- on recognizances given by respondents in actions of forcible entry and detainer, in certain cases,..... 708
- upon judgments in trustee process,..... 724-729
- upon a recognizance for debt after three years,..... 711
- Against bail, how to issue, and what to be set out therein, . . . . . 642
- may be issued by justices of the peace against bail in actions before them, although amount of debt and costs on judgment exceed their general jurisdiction, . . . . . 606, 642
- how writ served in such cases, . . . . . 606
- to be served within one year after time of rendering judgment, . . . . . 642
- defendants in, may plead jointly or severally, . . . . . 642
- costs on, to be paid by debtor before he can take poor debtor's oath,..... 627
- costs on, to be paid upon surrender of principal by bail, . . . . . 642, 644
- in criminal cases,..... 625
- May be brought to obtain an execution, after time for taking out execution has expired,..... 626
- when property sold on preceding execution was not liable therefor, &c., and damages have been recovered of officer or creditor, . . . . . 626
- when, after execution and levy are returned and recorded, it is ascertained that the property levied on cannot be held therefor

**SEAMEN—continued.**

penalty on landlord, &c., for hindering, &c., in performance of shipping contract,.....	290
penalties, how recovered in such cases,.....	290
at sea, may make nuncupative wills,.....	477

**SEARCH WARRANT.**

to be supported by oath and accompanied with a special designation of the object of search,.....	9, 15
not to be issued except as prescribed by law,.....	9, 16
may be issued on complaint of fireward, &c., to search for gunpowder, gun cotton, &c., unlawfully deposited,.....	461
when to be issued, for liquors unlawfully kept for sale, &c.,.....	444, 445
may be issued, to search for property stolen, embezzled, &c.,.....	890
to search for counterfeit coin, forged bank notes, &c., or tools, &c.,.....	890
for obscene books, &c., intended to be sold or circulated,.....	890
for lottery tickets or materials for a lottery; and for gaming implements kept in gaming-houses,.....	486, 487, 890
shall designate the place and property, and direct the sheriff, &c., to search, in the day time,.....	890
shall direct officer to bring such property, if found, and the persons in whose possession found, before a magistrate,.....	890
when may be issued by two magistrates, or police court, authorizing search in the night time,.....	890
property seized on to be kept as long as is necessary, to be used as evidence on trial,.....	890
if stolen, embezzled, &c., to be returned to the owner,.....	890
other property destroyed by direction of court,.....	890, 891

**SEAWEEED.**

regulations concerning gathering, &c, of,.....	438
--	-----

**SECOND HAND ARTICLES.**

dealers in, may be licensed by mayor and aldermen, or selectmen,.....	457, 458
license to specify place of business, restrictions, &c., and continue in force one year,.....	458
penalty for dealing in, without license, or contrary to provisions of license,.....	458

**SECRETARY OF BOARD OF EDUCATION.**

(See Board of Education.)

appointment and duties of,.....	210, 211
---------------------------------	----------

**SECRETARY OF THE COMMONWEALTH.**

when and how chosen,.....	37, 62
return of votes for,.....	59, 60
to have custody of state seal,.....	128
records of commonwealth to be kept in office of,.....	27
copies of records, &c., certified by, to be evidence,.....	128
may appoint deputies,.....	27
when deputy may act as,.....	128
to attend the governor and legislature when required,.....	27
oath of,.....	33
not to hold certain other offices,.....	30, 33
vacancy in office of, how filled,.....	32, 37
qualifications of,.....	37
salary of,.....	128
neglecting to qualify for ten days, office to be deemed vacant,.....	37
to receive and examine certificates of elections of representatives to general court,.....	47

**SECRETARY OF THE COMMONWEALTH—continued.**

to deliver list of persons returned to sergeant-at-arms, and transmit certificates and list to house of representatives,.....	47
to approve newspaper in which notice of petition to general court is given,.....	47
to cause bills and resolves to be engrossed on parchment, and bound in separate volumes,.....	49
to publish, at close of each session, acts and resolves of legislature, &c.,.....	49, 50
how to distribute the same,.....	50
to publish general laws and resolves in pamphlet form, and send to town clerks, for distribution,.....	50
to publish general laws and other official information in newspaper,.....	50
to lay annual reports of certain public officers, in printed form, before legislature,.....	52
with consent of governor and council, may omit portions thereof,.....	52
may increase number of any document, if public interest requires,.....	53
and shall include in statement of expenses of his office a list thereof,.....	53
to furnish railroad reports to members of legislature and railroad corporations,.....	53, 839, 370
public series to towns,.....	53
to provide self-sealing envelopes for use of voters, and furnish to clerks of cities and towns,.....	58
to furnish to town and city clerks blank forms and envelopes for return of votes,.....	60
to notify returning officers, when returns are received unsealed,.....	60
to note date of reception, &c., of returns on envelopes,.....	60
to transmit returns sealed to governor and council,.....	60
to lay such returns, with certificate of governor, &c., before legislature.....	60
to furnish blank forms for certificates, returns, &c., of representatives,.....	66
to make quarterly return of fees, under oath, and pay same into treasury,.....	128
may employ two permanent clerks,.....	128
may employ additional clerks and messengers,.....	128
salaries of such clerks and messengers,.....	128
to give certificate, without charge, for release of imprisoned seamen,.....	128
to issue passports to citizens of any color,.....	128
to furnish blanks for returns of certain officers accountable for fees, costs, &c.; 128, 129, 152, 611	
to transmit such returns, when received, to auditor,.....	129
to prepare, annually, abstracts of criminal cases, and append the same to report of attorney-general,.....	129
to forward instructions and forms to commissioners to take depositions in other states,.....	132
to be commissioner on repairs, &c., of state house,.....	134
appointment of watchmen of state house subject to approval of,.....	133, 134
to transmit to auditor statement of amount of warrants drawn by governor,.....	136
duties of, when vacancy occurs in office of treasurer,.....	138
to make annual report to legislature of expenses of office,.....	141

**SECRETARY OF THE COMMONWEALTH—continued.**

- to transmit manuscript county maps to county commissioners for corrections, &c., ..... 144
- to lay before legislature estimates of county taxes, &c., ..... 146
- penalty for neglect, ..... 146
- to prepare annual abstract of returns of registers of deeds, and lay before legislature, ..... 155
- to transmit to clerks of cities and towns blanks for census returns, ..... 168
- and to annex to such blanks instructions as to time of making return, ..... 168
- to furnish to town clerks blank books and forms of returns for recording, &c., births, marriages, and deaths, ..... 170
- to cause such returns to be bound and indexed, .. 170
- to prepare tabular abstract of returns, and report annually to legislature, ..... 170
- to prosecute for penalties for violation of law concerning registration, ..... 170
- with treasurer, to apportion income of school fund among towns, ..... 212
- to notify selectmen when towns must vote on abolition of school districts, ..... 221
- to publish returns of inspector-general of fish, ..... 254
- may grant licenses to hawkers and pedlars on certificate of selectmen, &c., ..... 282, 283
- to keep record of such licenses, &c., ..... 283
- duty of, as to returns by banks, ..... 311, 312
  - by savings banks, ..... 313
  - by railroad corporations, ..... 369
- to publish weekly and monthly abstracts of returns of banks in newspaper, ..... 311
  - to have regard to prices offered in selecting newspapers for publication, ..... 311
- to furnish blank forms to banks, ..... 311, 312, 313
- to cause abstracts of annual returns to be prepared and printed, ..... 312, 313
- and to send one copy to each cashier, &c., ..... 312
- to prepare a separate abstract of the returns of banks organized under general laws, ..... 316
- to give notice to attorney-general of violation of law by insurance companies, &c., ..... 321
- to submit to legislature annually an abstract from certificates of certain corporations organized under general laws, ..... 342, 343
- to prepare annual abstract of pauper returns by overseers of the poor, ..... 386
- to notify district-attorney of neglect of overseers, &c., to make returns, ..... 386
- to print annual report of liquor commissioner, and lay before legislature, ..... 439
- to furnish innholders, &c., with summary of laws relating to them, ..... 457
- exempt from serving as juror, ..... 679
- fees of, for copies of resolves to private persons, .... 787

**SEEDGE.**

- punishment for wilfully cutting, &c., without license, ..... 806

**SEISIN. (See Disseisin.)**

- to be deemed in commonwealth upon judgment in its favor on information of intrusion, ..... 718
- how declared on in writ of entry, &c., ..... 692
- in such action, actual entry need not be proved, ... 692
- what shall be deemed sufficient proof of, ..... 692
- how delivered on levy of execution, ..... 518
- In mortgage, to be so declared in real actions founded on mortgage titles, ..... 654

**SEIZING AND LIBELLING FORFEITED GOODS.**

- by whom to be seized and kept, ..... 772
- libel to be filed within fourteen days, ..... 772
  - in clerk's office of superior court, or before justice of peace or police court, according to value of goods seized, ..... 772
  - form and substance of libel, ..... 772
  - duties of clerk, upon the filing of the libel, ..... 772
  - to make advertisement and notice, ..... 772, 773
  - libellant to publish the same, ..... 773
  - libel to be entered, ..... 773
  - proceedings when claimant appears, ..... 773
  - where no claimant appears, ..... 773
  - all questions of fact to be tried by a jury, ..... 773
- Decree of forfeiture or restitution, ..... 773
  - disposition of proceeds of sale under decree, .... 773
  - claimant to have damages, with costs, if seizure was without probable cause, ..... 773
- Costs in other cases to go to prevailing party, ..... 773
  - or may, in whole or in part, be paid out of proceeds of goods seized, ..... 773
- Executions, and other process, may issue, ..... 773
- Appeal, by either party, to supreme judicial court, ..... 773
  - proceedings on appeal as in other civil cases, ... 773

**PROCEEDINGS ON A LABEL BEFORE A JUSTICE OF THE PEACE OR POLICE COURT.**

- justice or court to make out advertisement or notice, ..... 773
- notice where, and how long, to be posted, ..... 773
- mode of trial, ..... 773
  - jury may be called in only as in other civil cases, ..... 773
- Appeal allowed by either party to superior court, ..... 773

**GENERAL PROVISIONS.**

- depositions may be used as in trials at common law, ..... 773
- goods seized may be delivered to claimant on his giving bond, ..... 773
  - form and condition of the bond, ..... 773, 774
- value of goods to be determined by appraisement, ..... 774
  - how appraisement shall be made, ..... 774
  - appraisers to be sworn, and to make return of inventory and appraisement, ..... 774
- appraisement to be conclusive as to jurisdiction of the court, ..... 774
- perishable goods may be sold, ..... 774



**SELECTMEN—continued.**

to be sworn,.....	161
penalty on, for entering on duties before taking oath,.....	162
to be overseers of poor where other persons are not specially chosen,.....	162
to be assessors of taxes where others are not specially chosen,.....	162
when acting as assessors, to take assessors' oath,.....	162
to make lists of voters, and post them ten days before elections,.....	56
when to be in session to receive evidence of qualifications of voters,.....	56
to give notice of meeting on posted lists,.....	56, 57
to correct lists,.....	57
to require proof of naturalization before entering name of naturalized citizen on list,.....	57
when not answerable for omissions of names of voters from list,.....	57
penalty for giving false answer to,.....	57
on, for neglect of duty,.....	57
to call meetings for elections, &c.,.....	58, 68, 69
to decide, in certain elections, whether officers shall be voted for on one or more ballots,.....	58
to preside at national, state, &c., elections, and have powers, &c., of moderators,.....	19, 22, 58
to provide, at polls, envelopes for use of voters,.....	58
not answerable for refusing vote of person not on voting list, unless sufficient evidence of his right to vote is furnished, &c.,.....	58
to receive, sort, and count votes at national, state, county, and district elections,.....	59, 69
duties of, at elections, in towns composing part of a representative district,.....	65
under precept to fill vacancy in house of representatives,.....	66
penalties for giving false certificate of election, and neglect of duty,.....	66
compensation of, for services at election of representatives,.....	66
penalty for neglect of duty at election of representatives in congress,.....	69
of district-attorney, &c.,.....	72
in what cases may remove collector of taxes and appoint temporary collector,.....	87
to notify and draft enrolled militia upon order of commander-in-chief,.....	92
duty of, in organization of companies of militia,.....	94
to provide armories for military companies and transmit certificates of rent, &c., to adjutant-general,.....	104
to provide carriages and camp equipage for militia drafted in case of invasion, &c.,.....	110
duties of, respecting compensation of militia,.....	111
respecting perambulation of town lines,.....	157, 158
penalties on, for neglect,.....	157, 158
in absence of town clerk, to preside at election of moderator of town meeting,.....	160
in certain cases, to receive votes for town clerk pro tempore,.....	162
to appoint certain town officers,.....	161, 265, 266, 270
may appoint town clerk in certain cases,.....	162
to appoint officer of watch, &c., where watch is established,.....	173
and direct manner in which watchmen shall be equipped,.....	173
may order watch where none is established,.....	173
exempt from liability to watch,.....	174

**SELECTMEN—continued.**

to call meeting for organization of watch districts in villages,.....	174
powers of, at fires when firewards are not present,.....	176
may appoint enginemen, &c., and discharge them, where there is no fire department,.....	177, 178
may establish fire departments and appoint engineers, &c.,.....	178, 179
to call meetings for organization of fire districts, upon application, &c.,.....	180
to act as board of health when none is chosen,.....	188
may enforce vaccination of inhabitants when public health requires,.....	191
to give public notice, &c., when dangerous disease exists in town,.....	193
to endeavor that youth regularly attend school,.....	217
may take land for school-houses, in certain cases,.....	220
penalty on, for neglect to insert article in warrant for annual meeting concerning abolition of school districts,.....	221
to determine site of school-houses in districts, if district cannot agree,.....	223
powers and duties of, in laying out town ways, &c.,.....	239-241
powers of, in relation to ways dedicated to the public, but not laid out and accepted,.....	243
to ascertain correct location of highways, &c., in certain cases,.....	243
to cause permanent stone bounds to be erected to mark angles, &c., of ways laid out by them,.....	243
to assign limits to surveyors of highways, in writing, before first of May,.....	245
to regulate watercourses in roads,.....	246
to determine compensation for damages occasioned by repairs of highways,.....	247
to report at annual town meeting places where guide posts are erected, and where needed,.....	249
penalty for neglect to make such report,.....	249
may establish and grade sidewalks, in certain cases,.....	250
powers and duties of, in relation to sewers and drains,.....	264, 265
may establish regulations for survey of marble,.....	274
may appoint inspectors of milk,.....	274
may appoint weighers of coal,.....	279
to appoint persons to seize illegal measures of charcoal, &c.,.....	280
may license auctioneers, &c.,.....	280
when authorized by towns, may make rules regulating hawking and peddling by minors,.....	281
to appoint weighers of vessels and lighters, when such vessels are used to transport stores, &c.,.....	290
powers, &c., of, in relation to sign-boards and gates, &c., at railroad crossings,.....	360, 361
proceedings by, in relation to raising or lowering highway, &c., crossed by railroad,.....	357
to apply to county commissioners, before laying out highways across railroads,.....	358
certain acts and doings of gas-light companies to be under control of,.....	343
to designate where posts of telegraph companies shall be located,.....	373
to assess damages to land owners in such case,.....	373
compensation for services, &c.,.....	373

**SELECTMEN—continued.**

- duties of, respecting unclaimed effects of passengers in possession of common carriers,..... 427
- to enforce provisions of game laws, &c.,..... 430
- may grant permits to take oysters and other shell fish from beds,..... 432
- may grant licenses to plant and grow oysters, .... 433
- to appoint agents to sell intoxicating liquors for medicinal, &c., purposes, annually,..... 440
- penalty on, for neglect to appoint such agents,..... 440
- to prosecute bond of such agents for breach thereof,..... 441
- powers of, to abate certain nuisances, .....453, 454
- may give certificates to persons applying for innholder's license, ..... 455
- may grant licenses to keepers of intelligence offices, dealers in second-hand articles, pawnbrokers, &c., .....457, 458
- may grant licenses for, and regulate use of, steam engines, furnaces, &c., in certain places,.....458, 459
- may examine steam engines and boilers, and suspend or prohibit use thereof,.....459, 460
- may remove steam engines, &c., as nuisances in certain cases, ... 460
- to require unlicensed dogs to be destroyed,..... 462
- when to order payment from town treasury for damages done by dogs to sheep,..... 462
- may grant licenses for billiard tables, &c., and for theatrical exhibitions, &c.,..... 463
- when to certify approbation on indentures of apprentices, . . . . . 550
- duty of, to inquire into treatment of apprentices bound by them,..... 550
- duties and liabilities of, as to jurors, .. 680-683
- may offer reward, not exceeding five hundred dollars, for arrest of certain offenders,.... 831
- reward, how to be paid, where there is more than one claimant, ..... 831

**SELF-GOVERNMENT.**

- exclusive right of, unless expressly delegated to United States,..... 14

**SENATE.**

- the first branch of the legislature,.... 19
- to be final judge of elections, &c., of its own members,..... 20
- vacancies in, how filled, . . . . . 20
- may adjourn, not exceeding two days,..... 20
- shall choose its own president,..... 20
- shall appoint its own officers, and make its own rules of proceeding, ..... 20
- to try all impeachments made by house of representatives,.....20, 21
- limitation of sentence by,.....20, 21
- sixteen members of, a quorum,.....21, 39
- may punish for contempt, &c.,..... 22
- cases where rights and privileges of, are concerned, how tried, ..... 22
- when may require opinion of justices of supreme judicial court, .. 27
- compensation and mileage of members of, when and how paid,..... 48
- deduction to be made for absences, .. 48
- officers of, compensation of, .. 48
- doorkeepers, &c., how appointed, ... 133, 134
- compensation of doorkeepers, &c.,..... 48
- books, &c., except, &c., not to be ordered for members of, at charge of state, ..... 48
- not to sit for transaction of ordinary business on certain holidays,..... 49
- Clerk of, salary of,..... 48

**SENATE—continued.**

- to make index and duplicate journal,.... 41
- to certify attendance, on written statements of members, ..... 41
- to have custody of journal, files, &c., of,.... 41
- copies certified by, to be evidence, ... 41
- President of, compensation,.... 41
- to approve accounts for expenditures, under order of senate,..... 140

**SENATORS.**

- number of, when and by whom elected, 19, 19, 25, 25, 25
- districts for the choice of,..... 19, 25, 25
- votes for, return of,.... 19, 25, 25
- by whom to be examined, &c.,..... 25
- how to be summoned to take their seats, ... 25
- qualifications of,..... 25, 25, 25
- to be specially sworn for the trial of impeachments,..... 25
- oath of, .. 25, 25
- certain officers not to be,..... 25, 25
- number and apportionment of,..... 25
- as members of committees, may administer oaths to witnesses, ..... 25
- not eligible to office created during their term of service, except by vote of people, ..... 25
- together with board of education, to select candidates for state scholarships in their districts, ..... 25
- exempted from serving as jurors, .. 25

**SENTENCE.**

- what to be, where no punishment is awarded by statute,..... 41
- may be for costs also, in cases of assault, &c., in addition to imprisonment, . . . . . 41
- persons convicted of violations of laws relating to sale of intoxicating liquors, to be sentenced to pay costs, ..... 41
- if offence is punishable by imprisonment in jail, how sentence may be modified, .. 41, 41
- if punishable by fine or imprisonment, conditional sentence may be awarded, . . . . . 41
- to pay fine, &c., in limited time, or in default thereof, to be imprisoned,.... 41
- if punishable by fine and imprisonment, court may award fine without imprisonment, or imprisonment without fine, except in case respecting sale, &c., of intoxicating liquors,.... 41
- if person is committed for fine and costs, not exceeding twenty dollars, magistrate to inquire into ability of defendant to pay, and to certify his inability,.... 41
- of female convicts not to be in state prison, .. 41, 41
- of female convicts with nursing infants, .. 41
- of boys under sixteen convicted of state prison offence, &c.,..... 41
- of juvenile convicts,..... 41
- in all cases not capital or punishable in state prison, sureties of peace may be required, in addition to punishment prescribed by law, . . . . . 41
- recognizance in such cases to be filed of record, .. 41, 41
- proceedings on forfeiture of, . . . . . 41, 41
- of solitary imprisonment and hard labor for not over three years, on a person not before sentenced to like punishment,.... 41
- to state prison to be not less than for one year, .. 41
- form of sentence to state prison, . . . . . 41
- to be for confinement to hard labor and solitary imprisonment, ..... 41

**SENTENCE — continued.**

the solitary to precede the hard labor, .....	846
convict, how removed to state prison, .....	846, 872
effect of sentence to state prison, .....	846
when to begin to run, .....	846
to work forfeiture of office, .....	846
reversal of sentence on writ of error, to restore to office, &c., .....	846
to pay fine and costs, or imprisonment in jail, &c., sheriff to execute, .....	846
proceedings in such case, .....	846
of convict already in prison under sentence, .....	846
proceedings in such case, .....	846, 847
of death, when and how to be executed, .....	847
when convict has become insane, .....	847
when convict is a female quick with child, .....	847
who to be present at, and return of sheriff, .....	847
clerk of court to subjoin brief abstract of return to the record of conviction, .....	847
against corporations indicted, upon default, &c., .....	847
commutation of, provisions concerning, .....	865, 866

**SERGEANT-AT-ARMS.**

how and when chosen or appointed, .....	183
salary and bond of, .....	183
to serve processes, &c., ordered by legislature or either branch, .....	183
to have general charge of state house and apartments, .....	183
to keep chambers, &c., in state house in good order, &c., .....	183
to preserve order among spectators of the legislature, .....	183
to prevent trespasses on the state house, .....	183
to notify prosecuting officer of such trespasses, .....	183
to attend members and clerks when charged with messages, .....	183
to appoint door-keepers and assistants, subject to approval of presiding officers, .....	183
to appoint watchmen of the state house, for whose fidelity he shall be responsible, .....	183, 184
may appoint fireman, .....	184
to exercise strict superintendence over his subordinate officers, .....	183
to receive no fee for opening rooms for view of visitors, .....	184
to be commissioner on repairs, &c., of state house, .....	184

**SERPENTS.**

penalties for selling, firing, &c., without license, ....	460
---	-----

**SERVANTS, (see Apprentices,)** .....

**SERVICE.**

of writs and subpoenas on defendants, .....	622-624
on defendants who are absent, or whose residence is unknown, .....	623, 645-647
on absent and unknown persons interested in petitions for partition of lands, .....	669
defective or insufficient, court may order further notice, .....	646, 647, 669
of trustee process, .....	721

**SET-OFF.**

of mutual demands between plaintiff and defendant in certain actions, .....	669
not to be made except in actions founded on demands which could themselves be set off, .....	670
no demand to be, unless founded on judgment, or contract express or implied, .....	669
nor unless it is for price of property sold, money paid, had, or received, or services done, nor unless it is liquidat-	

**SET-OFF — continued.**

ed, or can be ascertained by calculation, .....	689, 670
nor unless it existed at time of commencement of suit, and then belonged to defendant in his own right, .....	670
of demands assigned to defendant with notice to plaintiff before suit brought, .....	670
of notes, drafts, and demands assigned within six months previous to insolvency proceedings to a person indebted to an insolvent debtor, not to be set off in action by assignee, .....	587
of demands founded on bonds or contracts having penalties, not to be for more than is equitably due, .....	670
where there are several plaintiffs or defendants, demand must be due from all jointly, except in case of dormant partners, .....	670
how and when may be made in case of dormant partners, .....	670
how allowed in actions against trustees, executors, and administrators, .....	670
allowed in action by and against executors and administrators, as if action were against deceased, except, &c., .....	626, 670
not allowed in such actions unless demands are in same right, .....	670
judgment in such cases, how entered, .....	670
of demands against a person for whose use an action is brought by a trustee, .....	670
declaration to be filed with answer of defendant when he relies upon a set-off, .....	670
subsequent allegations and pleadings in such case to be same as if action was brought thereon, .....	670, 671
plaintiff entitled to all legal defences, .....	671
not to discontinue after answer in set-off is filed, without consent of plaintiff, .....	671
statutes of limitation, how applicable to, .....	671, 779
provision for costs, .....	671, 781
judgment to be rendered for balances found due to either party, .....	671
not to be rendered against plaintiff if he had assigned his demand before action brought, nor for balance due to any other person, .....	671
defendant who files, how far regarded like a plaintiff in other actions, as to writs of review, .....	748
In action before justices of the peace and police courts, .....	671
defendant to file set-off at the time when action is entered, .....	671
other proceedings as in other courts, .....	671
justice or court not to enter judgment for an amount exceeding the limit of their jurisdiction in other cases, .....	671
Of judgments, when a cross action is brought by a defendant, or one of several defendants, against a plaintiff out of state, .....	645
when plaintiff in review reduces the original judgment, .....	748
Of executions between same parties may be made, .....	687
in what cases not allowed, .....	687
when not to extend to attorney's fees and disbursements, .....	687
proceedings therefor, .....	687
Of improvements, against rents and profits recovered in writs of entry, ....	694

**SET-OFF** — continued.

In case of persons at  
teen,.....

**SETTLEMENT.**

how acquired so as to ob  
person when poor,.  
provisions for persons who  
under former laws,.  
to continue till lost or  
new one,.....

former, defeated by acqui  
**LEMENT OF TITLE.**

proceedings by persons in  
tate to compel part  
to bring action,....

**SINKERS AND DRAINS.**

provisions concerning, (*see Dr*  
**EXTONS, &c.**

to make return to town cler  
cerning deaths,....  
compensation for such ret

**SHAKERS.**

how exempted from enrolment

**SHARES.**

In corporations, how attached  
tion,.....

**SHEEP.**

where taxable,.....  
less than six months old,  
ation,.....  
to be impounded if found at  
&c.,.....  
six, exempted from atten  
tion,.....

**SHELL FISH.**

other than oysters, penalty f  
&c., .....  
permits to take may be grants  
may be taken by inhabitant  
use without such p  
vessels, boats, &c., having  
seized, ...  
to be discharged, if own  
before prosecution,  
prohibitions concerning, no  
dians, ....  
regulations concerning, in  
Marshpee, and Nan

**SHERIFFS.**

when and how elected,.....  
term of office, .....  
not to hold certain other office  
return of votes for,.....  
to be sworn,.....  
in case of failure to elect, g  
election, ....  
vacancy in office of, how filled  
may appoint deputies, who sh  
bond to be given by, to trea  
wealth, ..  
with condition faithfully  
and be responsible  
sufficiency of, to be exam  
rior court,.....  
if insufficient, new to be g  
how surety on, may be di  
penalty for neglecting to g  
proceedings in case of sue  
proceedings when conditio  
copies of, to be furnishe  
person applying, &  
such copy to be received a

**SHERIFFS — continued.**

how to give notice of special term of supreme court for trial of capital cases,.....	556
to adjourn court, and give notice thereof in absence of judge,.....	568
penalty on, for not paying money collected on execution on demand,.....	691
to perform duties of criers without compensation,.....	618
exempt from serving as jurors,.....	679
when liable if they take a bail bond with one surety only,.....	642
when to deliver up body of person executed to college professors of surgery,.....	791
when to friends for interment,.....	791
when to any surgeon,.....	791
to seize forged and counterfeit bills, notes, tools, &c.,.....	811
to have care, rule, &c., of jails, except in Suffolk,....	860
compensation therefor,.....	860
to oversee infliction of sentence of solitary imprisonment in jail,.....	862
not to charge rent to jailers, &c., for houses provided for them by the county,.....	890
when may petition superior court to fix the salaries of certain officers,.....	800
shall keep and deliver to successor all warrants, &c.,.....	860, 861
penalty for neglect,.....	861
shall surrender to successor all prisoners, &c.,.....	861
shall deliver bodies of deceased prisoners to friends,.....	861
shall not furnish liquors to prisoners, unless prescribed,.....	868
penalty therefor,.....	868
shall remove officers appointed by them in jails, &c., who use intoxicating liquors as a beverage,.....	868, 864
may remove prisoners in case of pestilence or fire,.....	864
duty of, in regard to making returns of jails and houses of correction,.....	868
form of such returns,.....	868
duty of, in execution of sentences of death,.....	847
to request the attendance of certain persons,.....	847
to permit others to be present,.....	847
to make return of doings to secretary's office,.....	847
to file copy of warrant and return in clerk's office,.....	847
fees of, for official duties,.....	786
for serving process to be indorsed on the writ,.....	788
when not entitled to witness fees in criminal cases,.....	786
not to have interest in certificates for witness fees,.....	788
to make complaint for injury to property, &c., of Humane Society,.....	806
duty of, in suppressing riotous and unlawful assemblies,.....	815
may remove prisoners from one jail to another in same county, at his discretion,.....	867
may furnish employment to prisoners,.....	868
those confined in jails not required to labor,....	868
to be reimbursed by county for damages caused by insufficiency of jail,.....	868
falsely assuming to be, how punished,.....	814
suffering escape of person under sentence for fines, costs, &c., to be liable to pay the same,.....	862
alone to receive fines, forfeitures, and costs,.....	862

**SHERIFFS — continued.**

payment to deputy or jailer to be same as payment to sheriff,.....	862
to pay them over to county treasurer in thirty days,.....	862
remedy against, for neglect,.....	862
to render semiannual account to county treasurer,.....	862
penalty for neglect,.....	862
penalty on, for arresting fugitives from labor,.....	741
actions against, for default of deputies, to be brought within four years,.....	777
Deputies of, to be appointed by and sworn,.....	150
to collect taxes in certain cases,.....	79, 81, 83
duties and fees, when tax lists are committed to,.....	86
to serve process directed to them by county commissioners,.....	145
to serve all processes legally issued to them,.....	151, 618
may serve processes though their town, &c., is a party, &c.,.....	151
may serve processes, &c., in their hands when vacancy occurs in office of sheriff,.....	151, 153
duties of, respecting violation of law in selling liquors, &c.,.....	444, 447
protected from liability for service of process in liquor cases,.....	448
penalty on, for neglect to serve such process,.....	448
for arresting fugitives from labor,.....	741
penalty for refusing to assist, when required,.....	813
penalty for falsely assuming to be,.....	814
exempt from serving as jurors,.....	679

**SHIPS AND VESSELS.**

where, and to whom taxable,.....	74, 75, 77
pilotage of,.....	237-239
penalty for boarding, in certain harbors, without leave, except by pilot, &c.,.....	290
for not leaving, when ordered, in such case,....	290
for enticing away crew of,.....	290
how recovered in such cases,.....	290
what to be deemed limits of certain harbors in such cases,.....	290
record not necessary to validity of mortgage of,....	767
lien on,.....	768, 769
(See Liens.)	
wilfully casting away, &c., to injure owner or insurer, how punished,.....	804, 805
fitting out with intent to destroy, &c., to injure owner, &c.,.....	805
owner, &c., making false invoices,.....	805
master, &c., making false protest,.....	805

**SHIP OWNERS.**

how far liable for embezzlement, &c., by master and mariners,.....	289
how to be sued by several freighters, &c., when ship and property are not sufficient to pay each in full,.....	289
when charterers to be deemed,.....	289
liability of, not to affect remedy against master or mariners, in case of embezzlement, &c.,.....	289

**SHIP TIMBER, (see Lumber,.).....****SHOES, (see Boots, &c.,).....****SHOP BILLS.**

punishment for engraving, &c., or circulating, in similitude of bank bills,.....	811
--	-----

**SHORE LINE BETWEEN HEADLANDS.**

how described,.....	48
---------------------	----

**SIDEWALKS.**

- may be constructed by persons owning or occupying land adjoining highway, in towns,.....249, 250
- width of, how indicated,.....249, 250
- penalty for riding or driving upon, how recovered, &c.,.....250
- Hability of persons for obstructing highways not diminished, &c ,.....250
- authority of surveyor of highways, &c , not limited by these provisions,.....250
- provisions not to apply to cities, . . . . .250
- In cities and towns adopting provisions of law therefor, may be established and graded by mayor and aldermen and selectmen, . . . . .250
- one half the expense of, may be assessed on abutters,.....250
- assessments for such part of expense to be a lien on real estate,.....250
- not to be dug up or obstructed without consent of mayor and aldermen or selectmen,.....250
- city councils may provide by ordinance for removal of snow and ice from,.....250
- and affix penalties for violation of such ordinances,.....250

**SIGN-BOARDS.**

- when to be erected at railroad crossings,.....360

**SISTERS.**

- when to inherit property of brothers or sisters, . . . .474

**SLANDER.**

- evidence of truth of matter may be given in evidence as justification, in civil actions for,.....662
- justification in actions for, not proof of malice, . . .662
- form of declaration for,.....666
- actions for damages for, to be brought in two years, . . . . .777

**SLIGHTS, &c.,**

- not to be used in roads without bells,.....428

**SLUNG SHOT.**

- penalty for being armed with, &c.,.....816
- for manufacturing,.....816

**SMALL POX.**

- provisions relating to persons sick with,.....198

**SNOW AND ICE.**

- city councils may provide by ordinance for removal of, from sidewalks, and affix penalties,.....250

**SOCIAL LIBRARIES. (See Libraries.)**

provisk

**SOLDIER.**

not to

how so

in actu

**SODOMY.**

how pt

**SOLE COI**

dissolsh

**SOLE LE****SOLITAR**

sentenc

refract

sentenc

**SPEAKER**

of hows

**SPECIAL**

provisk

**SPECIAL****SPECIAL PLEADING.**

- abolished,.....654
- (See Pleading.)

**SPECIE.**

- banks to keep an amount of, equal to fifteen per cent. of circulation and deposits,.....302
- deposited by Boston banks in clearing house to be deemed specie,.....308
- certain balances, &c , to be deemed,.....313

**SPECIFIC PERFORMANCE.**

- of written contracts, suits for, may be brought in supreme court in equity,.....559
- for the conveyance of land, may be enforced by superior court or probate courts, when party thereto dies, or is put under guardianship. . . . .575
- conveyance, how ordered by probate court, and made in such case,.....575

**SPECIFICATION OF PARTICULARS.**

- may be required by court of either party to actions, . . . . .680

**SPENDTHRIFT.**

- word, how construed,.....51
- guardian of, how appointed,.....544
- powers and duties of,.....544
- contracts by, when void, . . . . .549
- living out of state, real estate of, how sold by guardian,.....513, 514
- common, how punished,.....620, 621

**SPIRITUOUS LIQUORS.**

- provisions respecting manufacture and sale of,.....438-443
- (See Liquors.)

**SPRINGFIELD.**

- land in, ceded to United States,.....41

**SPRINGS.**

- poisoning, how punished,.....794
- wilful or malicious corrupting, &c.,.....823

**SQUIBS.**

- penalties for selling, firing, &c., without license,....460

**STABLES.**

- penalty for erecting or using, for more than four horses, except when directed by selectmen, &c , . . . . .458
- use, &c., of, may be restrained by injunction by supreme judicial court,.....458
- livery, in maritime towns, not to be used except when selectmen direct, under penalty, . . . .458
- keepers of, not to give credit to students, under penalties,.....457

STATE LIBRARY, ( <i>see Library</i> ).....	54
STATE LUNATIC HOSPITAL, ( <i>see Lunatic Hospitals</i> ).....	408-411

STATE MAP.	
provisions for correcting,.....	144
STATE PRISON.	

GENERAL PROVISIONS.

to be the general penitentiary and prison,.....	869
prisoners sentenced thereto by United States courts, except under fugitive slave law, may be confined,.....	869, 870
jurisdiction of offences therein, to be in Suffolk and Middlesex courts,.....	870
process to be served therein, to be directed to warden,.....	870
and to be served and returned by him,.....	870
governor and council may cause additional cells or buildings to be made,.....	870
and additional accommodations for officer,.....	870
shall visit the prison annually,.....	870
shall inquire into alleged abuses,.....	870
may alter general discipline,.....	870
shall draw warrants for money appropriated for,.....	870
officers and assistants in, exempted from military duty,.....	98

OFFICERS AND SALARIES.

Officers, of whom to consist,.....	870
Inspectors, how appointed, tenure and term of office,.....	870
Warden, chaplain, physician and surgeon, how appointed and tenure of office,.....	870
Deputy warden, and other officers, except assistant watchmen,.....	870
Assistant watchmen, how appointed, &c.,.....	870, 871
warden to report his appointments to inspector,....	871
no officer of prison to have any other business,....	871
Salaries of the various officers,.....	871

INSPECTORS.

appointment, tenure, term of office, and salary,.....	870, 871
duty and authority of,.....	871
to establish rules and regulations,.....	871
subject to approval of governor and council,....	871
when approved, copy to be delivered warden,....	871
to visit the prison monthly, or oftener,.....	871
single inspector to make weekly visit,.....	871
to examine prison books and documents,.....	871
must approve warden's bill of purchases, before payment,.....	871
to report to governor violations of law and omissions of duty by officers,.....	871
to remove forthwith unfaithful, &c., officers, and those using intoxicating liquors as a beverage,.....	871
to make annual detailed report to governor,....	871
subject matters of the report,.....	871, 872

CHAPLAIN.

appointment, &c., salary and duty of,.....	870, 871, 872
--	---------------

PHYSICIAN AND SURGEON.

appointment, &c., of,.....	870, 871
general duty,.....	872
all orders for hospital supplies to be in writing,....	872
care and treatment of the sick and insane,.....	872

WARDEN AND DEPUTY WARDEN.

Warden, appointment, tenure, and salary,.....	870, 871
---	----------

STATE PRISON — continued.

to give bond with sureties, to be filed in treasurer's office,.....	872
shall execute warrant for removal of convicts from jail to prison,.....	872
proceedings on such warrant,.....	872
sheriffs and others to aid in executing the warrant,.....	872
shall reside constantly within the prison precincts,.....	872
shall report his appointments to inspectors,....	871
to have no other business,.....	871
to propose in writing alterations in regulations,.....	873
to have charge, custody, and government of convicts,.....	873
of the prison and property, and to be treasurer thereof,....	873
regular accounts thereof to be kept,.....	873
accounts to be made in detail, to September 30, each year,.....	873
to be filed in treasurer's office for inspection of the legislature,.....	873
duty of, in regard to all bills for supplies, &c.,.....	871, 874
duty and power as regards discipline and care of convicts,.....	874, 875
may cause Sabbath school to be kept,.....	875
and evening schools for one hour, except on Sundays,.....	875
to regulate visits and communications between convicts and their friends,.....	875
may make rules as to introduction of newspapers and visitors,.....	875
visitors must have permit,.....	875
to keep register of visitors,.....	875
may refuse admission to person having permit,.....	875
to report such refusal to inspectors,.....	875
to keep record of conduct of convicts,.....	875
duty as to regulations for the rations, clothing, &c., of convicts,.....	876, 877
as to discharged convicts and their agent,....	877
vacancy in office of, how filled,.....	878
warden pro tempore, where and how appointed,.....	878
Deputy warden, appointment, &c., and salary,.....	870, 871
duty of, in absence or disability of warden,....	878
to act, and be liable, as warden,.....	878
if governor and council are not in session, inspectors may require him to give bond,.....	878
to have salary of warden from time of giving bond,.....	878
if does not give bond, inspectors may remove him, and appoint warden pro tempore,.....	878
bond, and duties and liabilities of warden pro tempore,.....	878

CONTRACTS.

to be made by warden in writing and approved by the inspectors,.....	878
warden may sue or be sued thereon,.....	878
suit not to abate, by office of warden becoming vacant,.....	878
proceedings in such case,.....	878
controversies in regard to, warden may submit to arbitration,.....	878, 874
inspectors to approve the arbitrators,.....	874
principal articles to be purchased by the year,.....	874

STATE PRISON—*continued.*

proposals therefor, and proceedings thereon,.....	874
no officer to be concerned in contracts, &c., about the prison,.....	874
bills to be taken of all purchases and supplies, &c.,.....	874
examination as to their correctness,.....	874
DISCIPLINE, &c., OF CONVICTS.	
treatment to be kind,.....	874
order and obedience to be enforced and escape prevented,.....	874
warden may require aid of all officers therefor, except, &c.,.....	874
convicts sentenced to hard labor to be employed,...	874
not to be employed in printing or engraving,....	874
the refractory may be confined to solitary labor, by warden, if one or more inspectors consent,.....	874
sentence by court of solitary imprisonment, how executed,.....	874
Sabbath school may be maintained,.....	875
suitable instruction in reading and writing,.....	875
Convicts to be kept separate, and have no intercourse with each other,.....	875
Interviews of with friends,.....	875
communication between, and friends,.....	875
regulations as to newspapers and visitors,.....	875
visitors not admitted without a permit from an inspector or the warden,.....	875
names and residences of visitors to be registered,....	875
register to be kept by warden and open to inspectors,.....	875
admission may be refused to persons having a permit,.....	875
warden to report such refusal to inspectors,.....	875

## RECORD OF CONDUCT.

to be kept by warden and submitted to governor and council,.....	875
what deductions to be made from term of sentence, for good behavior, by the record,.....	875

## ESCAPES, &amp;c.

escapes, or attempts by violence to escape, how punished	
assaults on warden	
punishment, when	
tence, .	
punishment of off	
leaving convict a	
gence, .	
aiding convict to e	
forcibly or fraude	
rescue,	
unlawful convey	
any con	
receiving arti	
prison,	

## RATIONS, &amp;c.

warden and inspec	
subject to app	
all rations, clothi	
may be chang	
no intoxicating li	
victs, .	
substance, &c.,	
physick	
articles of con	
and for	
prison to be suffici	
prisoners to have	

STATE PRISON—*continued.*

## INSANE CONVICTS.

provisions concerning,.....	878
who to be commissioners to examine,.....	878
warden to notify of apparent insanity of convict,....	878
commissioners to investigate the case,.....	878
proceedings if majority find that the convict has become insane,.....	878
convict to be removed to lunatic hospital,.....	878
on restoration to health to be returned to prison,...	878
confinement in hospital to be computed as part of term of imprisonment,.....	878

## DISCHARGED CONVICTS.

convicts when discharged to be decently clothed,...	877
warden may pay, not over five dollars, to each dis-	
serving,.....	877
or to the agent, who shall account therefor,...	877
Agent for, appointment, term of office, duties, and salary of,.....	877
office to be in Charlestown or Boston,.....	877
to keep account of expenditures,.....	877
expenditures not to exceed five hundred dollars in any one year,.....	877
to make annual return to the governor and council, ...	877

STATE REFORM SCHOOL FOR BOYS, (*see Reform School*),.....418, 423STATE SCHOLARSHIPS, (*see Scholarships*),.....212, 214STATE TAX, (*see Taxes*),.....77STATUTE OF FRAUDS, (*see Frauds*),.....82

## STATUTE OF LIMITATIONS.

provisions of,.....	775-779, 820
( <i>See Limitations.</i> )	

## STATUTES

enacting style of,.....	31
a general statute may be referred to in pleading by chapter, or other general designation,.....	654
and laws of this and other states and foreign countries, how proved,.....	675, 679
( <i>See Laws.</i> )	

## STAY OF PROCEEDINGS.



**STEAM ENGINES, &c. — continued.**

- owner aggrieved may have jury as in case of highway, ..... 459
- use of, may be restrained in mean time, by superior court or justice thereof, ..... 459
- verdict of jury, and costs in such cases, ..... 459
- erected and used contrary to law, &c., to be deemed common nuisances, ..... 459, 460
- may be examined by mayor and aldermen, &c., and use of, suspended or prohibited, ..... 459, 460
- may be removed by mayor and aldermen, &c., as nuisances, ..... 460

**STEELYARDS.**

- vibrating, may be used in weighing, if sealed, &c., annually, ..... 285

**STOCKS.**

- fraudulent over issues of, how punished, ..... 801, 802
- false entries as to transfer of, in books of corporation, how punished, ..... 802
- omitting to make true entry of transfer, ..... 802
- in trial of such case, the books to be evidence, ..... 802
- public, and in moneyed corporations, &c., taxable to owner, ..... 74
- stock for carrying on trade or business, when exempt from attachment and execution, ..... 624, 688

**STOVE.**

- one iron, used for warming dwelling-house, exempt from attachment and execution, ..... 688

**STRAITSMOUTH ISLAND.**

- ceded to United States, ..... 45

**STRAY BEASTS.**

- when taken up, notice of, to be entered with town clerk, ..... 425
- notice of, to be entered by clerk in book kept for that purpose, ..... 425
- how to describe them, ..... 425
- how to be cried, and what notification to be posted, ..... 425
- of ten dollars value, how to be appraised, ..... 425
- appraisers of, by whom appointed and sworn, ..... 425
- owner of, to have restitution if he appears within three months, ..... 426
- to pay charges before restitution, ..... 426
- charges for keeping, &c., how determined, ..... 425
- finder of, may sell at public auction, if owner does not appear within three months, ..... 426
- how to give notice of sale, ..... 426
- penalty on, for not giving notice, ..... 426
- to deposit net amount of sale in town treasury, ..... 426
- if not sold, owner may have restitution within one year, on paying charges, ..... 426
- if sold, to have proceeds if he appears within one year, ..... 426
- if owner does not appear, proceeds to be divided between town and finder, ..... 426
- penalty for taking away, without paying charges, ..... 426
- to whose use, and how recovered, ..... 426
- if taken up within ten miles of Agricultural Hall in Brighton, finder, how to proceed ..... 425

**STREETS. (See Highways.)**

- repairs of, &c., ..... 245-248

**STUBBORN CHILDREN.**

- how punished, ..... 820, 821

**SUBORNATION OF PERJURY, (see Perjury.)** ..... 812**SUBPOENA.**

- On bills in equity, how signed and issued, ..... 559, 562
- how served, ..... 524

**SUBPOENA — continued.**

- To witnesses, may be issued by a clerk of a court of record or any justice of the peace, ..... 672
- how and by whom served, ..... 672
- may be issued by police courts, to run into any county for witnesses in criminal cases, ..... 571
- (See Summons.)

**SUFFOLK COUNTY.**

- jurisdiction of, in common with Middlesex, on part of Charles River, ..... 144, 145
- county property in, to belong to Boston, ..... 144
- court house, jail, &c., in, to be provided by Boston, ..... 144
- county charges in, to be paid by Boston, ..... 144
- in Boston, aldermen to act as county commissioners for, ..... 148
- to have powers of commissioners in laying out ways, &c., ..... 242
- treasurer of city of Boston to be county treasurer of, ..... 149
- Board of accounts in, of whom to consist, ..... 149
- quorum of, ..... 149
- to meet quarterly, and examine and allow criminal costs, expenses of jail, &c., ..... 149, 150
- compensation of, ..... 150

**SUMMONS.**

- to witnesses in criminal cases, may be issued by police courts, to run into any county, ..... 571
- in criminal cases, may be granted by justices of the peace, on request of attorney-general or party accused, ..... 610
- On defendant in civil actions, ..... 622, 623
- separate to be served where property is attached, ..... 621
- to be served by copy in other cases, ..... 623
- to be served personally, or left at last and usual place of abode of defendant, ..... 623
- how served on absent defendants, ..... 623
- in real actions, ..... 623
- how served on counties, cities, towns, parishes, and other corporations, ..... 623
- in equity cases, ..... 624

**SUNDAY.**

- provisions concerning the observance of, ..... 424, 425
- (See Lord's Day.)

**SUNKEN ROCKS.**

- buoy on, ceded to United States, ..... 44

**SUPERIOR COURT.**

- to have one chief, and nine associate justices, ..... 562
- appointment of justices and tenure of office, ..... 24, 27, 565
- if chief is absent, senior justice to perform his duties, ..... 565
- held by one justice, to have powers given to the court, ..... 562
- justices of, to be conservators of the peace, throughout the commonwealth, ..... 565, 827, 831
- to make arrangements among themselves for holding terms, ..... 567, 568
- may award judgments, frame writs, and have necessary powers, ..... 565, 566
- make rules, ..... 566
- actions not to be commenced in, where ad damnum is less than twenty dollars, ..... 563
- parties may agree that judgments of, shall be final, ..... 563
- action in, may, in certain cases, be removed to supreme court, upon affidavit or consent of parties, ..... 565, 566
- judge of, not to charge juries in matters of fact, ..... 566

may set aside verdicts and order new trials,....	566
may, after verdict, report case to supreme court, ..	566
decision of single judge on pleas in abatement, and motions to dismiss for defect in form, to be final, .....	566
to enter orders and rescripts of supreme court, and judgment according thereto, .....	568
may enter judgment as of any day of a former term, .....	567
may be adjourned, .....	618
how adjourned in absence of judge, and notice given, ..	568
may establish seal, .....	568
may appoint necessary officers, .....	568
expenses incident to, how audited and paid, .....	567
cases in, of habeas corpus and personal liberty, of nuisance, and violations of liquor law, to have precedence, .....	566
records of other courts transferred to, how kept and certified, .....	566
Salaries of judges, .....	566

## APPEALS AND EXCEPTIONS.

appeals from, to supreme court, in matters of law apparent on record, .....	568
exceptions, how taken, allowed, and certified, and restored to files, .....	566
trial not to be delayed by allowance of, .....	567
if frivolous, judgment may be entered, .....	567
if disallowed or altered, may be proved, .....	567
questions on appeals, exceptions, &c., entered in supreme court, not to transfer case, .....	567
nor to discharge security in the action, .....	567
copies of papers in such cases to be transmitted by clerk, .....	568, 567
expenses of such copies, how taxed, .....	568
original papers may, in certain cases, be transmitted, .....	568
<i>(See Appeals, Exceptions.)</i>	

## TERMS.

times of holding in the several counties, .....	564
civil and criminal business to be transacted at different terms in certain counties, .....	564
not more than four for criminal business only, to be held by same judge in one year, .....	565
suits in recognizances in criminal cases to be brought in terms for criminal business, .....	564
established to be held at one place, may be	

Exclusive Original, of complaints for flowing land, ..	562
of information for intrusion on Indian lands, ..	719
Original and concurrent with supreme court of petitions for partition, writs of entry to foreclose mortgages, civil actions where damages or property claimed exceed four thousand dollars in Suffolk, or one thousand dollars in other counties, .....	562
suits for redemption of mortgages, .....	714
Original and concurrent with police courts and justices of the peace, of civil actions wherein damages demanded exceed twenty dollars, and do not exceed one hundred dollars, or with the police court of Boston, three hundred dollars, .....	53
Appellate from justices of the peace and police courts, ..	562, 572, 607, 60
when appeal or complaint for non-entry thereof is not duly entered, how it may be entered afterwards on leave, .....	53
security discharged by non-entry of appeal in due season, not revived by entry on leave, .....	563
from courts of insolvency, .....	562
on allowance or disallowance of claims offered for proof in that court, .....	566
of discharge to debtor, .....	562
from commissioners of insolvency on insolvent estates of deceased persons, .....	562
when claim does not exceed three thousand dollars in Suffolk, or one thousand dollars in any other county, .....	497
entry and trial of such appeals, .....	347
from board of health relative to offensive trades and closing tombs, .....	134, 136
from magistrates on charges of fraud in cases of poor debtors, .....	638, 639

## MISCELLANEOUS POWERS.

court may appoint person to act as attorney-general or district attorney in certain cases, .....	126
to examine bonds of sheriffs and coroners annually, .....	150, 153
may discharge surety on sheriff's bonds, .....	150
to certify to governor and council, &c., if sheriff neglects to give bond, .....	150
may remove register of deeds in Suffolk in certain cases, .....	163, 164

# INDEX.

## SUPERSEDEAS OF EXECUTION.

(See *Execution, Review, Evidences.*)

## SUPPORT.

of persons committed as rogues, common drunkards,  
&c., ..... 820

Of paupers. (See *Paupers.*)

## SUPREME JUDICIAL COURT.

### JUSTICES.

one chief and five associate justices, ..... 558  
how appointed, and tenure of office, ..... 17, 27, 568  
not to hold certain other offices, ..... 30, 88  
if chief is absent, senior justice to perform his du-  
ties, ..... 566  
to be conservators of the peace throughout the com-  
monwealth, ..... 566, 827, 881  
four to constitute quorum for full court, or court of  
law, ..... 558  
one at law term to have same powers as at jury term,  
and four at jury term to have powers of  
full court, ..... 555  
opinions of, may be required by each branch of legis-  
lature, and governor and council, ..... 27  
majority of, may remove from office clerks of the  
courts, commissioners of insolvency, sher-  
iffs, registers of probate and insolvency,  
and district-attorneys, ..... 558  
not to charge juries on matters of fact, ..... 566  
to arrange among themselves for holding terms of the  
court, ..... 567, 568  
one to be designated to attend at all times in Boston  
to hear equity cases, ..... 561  
Salaries of, ..... 26, 568  
to be paid without specific appropriation, ..... 139  
Single judge may arraign prisoners indicted for capi-  
tal crimes, ..... 558  
may pass sentence if prisoner pleads guilty, ..... 558  
may assign counsel and prepare for trial, if he  
does not plead guilty, ..... 558  
after decision upon exceptions in capital cases,  
may pass sentence or make arrangements  
for new trial, ..... 554  
may reserve questions of law for, and report cases  
to, full court, ..... 554  
may, after verdict, report case to full court, ..... 566  
powers of in equity cases, ..... 559, 560  
decision of, on pleas in abatement and mo-  
tions to dismiss for defect of form,  
final, ..... 566

### GENERAL PROVISIONS.

to have general superintendence of courts of inferior  
jurisdiction, ..... 558  
to issue certain writs to courts, corporations, and  
individuals for furtherance of justice and  
the execution of the laws, ..... 558  
to frame writs, award judgments, and have all other  
necessary powers, ..... 565, 566  
may appoint persons to perform duties of attorney-  
general or district-attorney in case of  
absence, ..... 180  
may make rules for various purposes, ..... 566  
concerning changes in forms of writs, ..... 622  
for settling truth of exceptions in certain  
cases, ..... 567  
may approve or alter rules of courts of insol-  
vency, ..... 562  
may set aside verdicts and order new trials, ..... 566  
may enter judgment as of any day of a former  
term, ..... 567  
may allow amendments, pass interlocutory orders  
out of court, &c., ..... 660  
may appoint all necessary officers, ..... 568

## SUPREME JUDICIAL COURT—

officers attending, payment of  
accounts for expenses of, 1  
paid, .....  
may establish seal, .....  
may be adjourned by order of judg  
how adjourned in absence of j  
thereof given, .....  
exceptions, how taken, examin  
entered, .....  
sitting in Barnstable county to ha  
Dukes county, .....  
writs and processes of, may be ent  
terms, .....  
orders and decrees respecting cases  
how entered, .....  
the words "the court" may me  
court held by single jus  
context and subject mat

### JURISDICTION.

#### IN CIVIL MATTERS.

Exclusive, of suits for divorce a  
riage, .....  
of suits on probate bonds, ....  
informations of intrusion in c  
Concurrent with superior court,  
partition, writs of e  
mortgages, and certai  
tions, .....  
suits for redemption of mortg  
Of cases removed from superior c  
consent of parties, ....  
how such cases are to be ente  
Appellate, of cases from su  
matters of law appare  
cases, .....  
from commissioners on insol  
ceased persons, .....  
Of cases in equity, (see *Equity*),  
Of cases from probate courts, ..

#### IN CRIMINAL CASES.

of trial for all capital crimes, b  
justices, .....  
at law terms or special terms  
for, .....  
in Dukes county to be h  
county, .....  
exceptions may be taken in su  
if frivolous, may be forthw  
judgment entered, .....  
if prisoner pleads guilty, single  
tence, .....  
if he does not plead guilty, may  
prepare for trial, .....  
after decision upon exceptions,  
pass sentence or take  
trial, .....  
Appellate of cases from su  
matters of law app  
record, .....  
questions on appeals and exce  
perior court, how tal  
lowed, and entered, ....  
to be entered on separate doc  
to be in order for argument  
court is in session, o  
nated, .....  
TERMS.

first day of term, how designated, ..

## SUPREME JUDICIAL COURT—continued.

## JURY TERMS.

times of holding in the several counties,.....	556
to be held by one justice,.....	556
at these terms the court to have and exercise all the powers not expressly reserved to full court,.....	556
law terms to be taken to be jury terms in some counties and for certain purposes,.....	556
in Barnstable to have jurisdiction in Dukes county,.....	556, 557
two or more sessions may be held at same term,.....	557
writs and processes may be entered at adjourned term,.....	557

## LAW TERMS.

when to be held, in counties of Berkshire, Franklin, Hampden, Hampshire, and Worcester,.....	556
these terms to be taken to be jury terms for certain purposes,.....	556
Court for the commonwealth, for all other counties, at Boston, on first Wednesday in January, and to be adjourned from time to time throughout the year,.....	556
by order of judge or agreement of parties, questions of law from any county may be entered at this term,.....	557
question of law, how entered, heard, &c., at such terms,.....	557
expenses of, to be audited by court and paid by commonwealth,.....	558

## FULL COURT, OR COURT OF LAW.

four justices to constitute a quorum,.....	558
four justices at jury term to have power of,.....	556
writs and processes cognizable by, how made out and returnable,.....	556
to try all capital cases, questions of law on exceptions, appeals from superior courts, cases stated by parties, on special verdicts, and other questions of law,.....	558, 554
questions of law reserved by single judge,.....	554
reported by superior court,.....	554
questions on exception, appeals, and in other cases for determination of, how entered,.....	556, 557, 557
case not transferred by such entry, but only the question,.....	557

## SUPREME JUDICIAL COURT—continued.

cont. interest when questions are frivolous,.....	554
may vacate judgments in cases in which exceptions are allowed,.....	554
judgment, how entered of a former term in case continued nisi,.....	557
time of receiving order for such entry to be noted by clerk,.....	557
security, not discharged thereby, how long held,.....	557
questions in criminal cases to be entered on separate docket, and proceedings thereon,.....	557
to be held specially for trial of capital cases where no law term is established,.....	555
except that cases in Dukes county are to be tried in Barnstable county,.....	555
to be specially convened when no law term is to be held within six months after indictment found,.....	555
chief justice to take measures to convene session in such cases,.....	555
notice of such special term, how given,.....	555
powers of court at such terms,.....	555
to determine equity cases on appeal from single judge,.....	559
upon interlocutory cases, reported by single judge,.....	559
may, within one year, allow entry of appeals from final decrees of single judge in equity, omitted to be duly entered,.....	559
questions of law in the counties of Berkshire, Franklin, Hampden, Hampshire, and Worcester, how entered, and heard in law terms for those counties,.....	554
how entered at Boston in court for commonwealth, by consent of parties, or by order of judge,.....	557
in all other counties, to be entered and heard in court for commonwealth at Boston, proceedings therein,.....	557

## SURETIES.

on bonds given to judge of probate court, to be inhabitants of this state, &c.,.....	555
may be discharged by probate court, or supreme judicial court, upon petition,.....	556
to be liable until new bond is given,.....	555
may have process against principal in certain cases,.....	555

## SURETIES OF THE PEACE.

what officers authorized to keep the peace and require sureties for good behavior,....	557
--	-----

**SURETIES OF THE PEACE—continued.**

complaint to be made on oath and subscribed, before a warrant shall issue,.....	827
warrant for arresting party complained of, what to recite, &c.,.....	827
defendant, when brought before a magistrate, to be heard in his defence,.....	827
shall be discharged, if there be no just cause of fear,.....	828
may be required to enter into recognizance, with sureties, to keep the peace for a term not more than six months,.....	828
shall not be bound over to the next court, unless he be charged with some other offence, &c.,.....	828
shall be discharged on complying with order to recognize,.....	828
shall be committed to jail or house of correction, &c., if he do not recognize,.....	828
may be discharged from jail, &c., on giving the security that was required,.....	828
may recognize anew, before any justice, when surrendered by his sureties,.....	829
may be ordered to pay costs of prosecution, or part thereof, and be committed, until, &c.,.....	828
where no order is made about costs, how they are to be paid,.....	828
may appeal from magistrate's order to superior court, on recognizing as required,.....	828
witnesses may be required to recognize to appear at appellate court,.....	828
authority of appellate court, in such cases,.....	828
if appeal be not prosecuted, recognizance to remain in force, and stand as security for costs,.....	828
penalty of recognizance may be remitted in part by court, &c.,.....	829
complainant to pay costs if complaint is frivolous, malicious, &c.,.....	828
in such case, to be answerable therefor, as for his own debt,.....	828

**SURGEONS. (See Physicians and Surgeons.)**

duties, exemptions, &c., of,....169, 198, 199, 680, 860, 870

**SURRENDER.**

of principal by bail,.....	648, 644
by sureties in recognizances for poor debtors arrested, &c.,.....	641

**SURVEY OF COAST, (see Coast Survey,).....46, 46**

**SURVEYORS OF HIGHWAYS.**

to be chosen at annual town meeting,.....	160
to be sworn,.....	161
penalty for refusing to serve,.....	165
not obliged to serve oftener than once in three years,.....	165
penalty on, for neglect of duty,.....	165
liable to indictment for defective highways,.....	165
to town for amount of fines, &c., imposed for defective ways,.....	165
limits of, to be assigned by selectmen,.....	245
list of highway taxes to be given to, by assessors,.....	245
to give notice to persons taxed,.....	245
to expend in repairs money received for highway taxes,.....	245
may remove obstructions in highways,.....	245, 246
not to remove fences, &c., set up to prevent spread of contagious disease,.....	246
not to turn watercourses without approbation of selectmen,.....	246

**SURVEYORS OF HIGHWAYS—continued.**

may make contracts for making or repairing ways, by vote of town,.....	246
may be empowered by towns to collect highway taxes,.....	246
may employ persons to make repairs to amount of ten dollars, in case of deficiency,.....	246
if towns neglect to raise money, may repair highways at town's expense, with consent of selectmen,.....	246
to expend taxes in succeeding years, in certain cases,.....	246
to exhibit tax bills, and render accounts to selectmen, under penalty,.....	246, 247
to render to assessors, at expiration of term, list of persons who have not paid highway tax,.....	247
to pay over surplus of money to town treasurer, under penalty,.....	247
of private ways and bridges, how chosen, power and duties,.....	248
penalty for refusal to serve, &c.,.....	248
to collect taxes, &c.,.....	248
penalty on, for neglect to pay over money,.....	248

**SURVEYORS OF LUMBER.**

one or more to be elected at annual town meeting,.....	160
to be sworn,.....	161

**SURVIVING OF ACTIONS AND DEATH OF PARTIES.**

actions which survive, and proceedings upon death and disabilities of parties,.....	648-652
what survive by statute, in addition to those by common law,.....	444, 648
when sole plaintiff or defendant dies, may be prosecuted or defended by executor or administrator,.....	648
may be entered in such case after decease of party,.....	648
executor or administrator may appear voluntarily, or may be cited in,.....	648
citation, how issued, served, and returned,.....	648
if executor or administrator does not appear, how judgment shall be rendered,.....	648
when one of several plaintiffs dies, action may proceed by or against the survivor,.....	649
when all the plaintiffs or all the defendants die, action may proceed by or against the executor or administrator of last survivor,.....	649
Trustee process, effect of death of parties in,.....	725, 726
Real actions, if demandant dies, heir or devisee may prosecute,.....	649
in case of devise, if first estate is not a freehold, the devisee of the first freehold estate in possession may prosecute,.....	649
there are several demandants, and one dies, heir or devisee may be admitted, on motion, to prosecute with survivor,.....	649
if the estate of the deceased passes to surviving demandants, or no motion is made by heir or devisee to come in, action may proceed,.....	649
if the tenant dies, the heir or devisee may appear, or may be cited in,.....	649
action then to be conducted as if commenced against heir or devisee,.....	649
if there are several tenants, and one dies, action may proceed against survivor,.....	649

**SURVIVING OF ACTIONS, &c. — continued.**

- Petition for partition to survive, and heir or devisee may appear as in real actions, ..... 649, 650
- If the estate passes to those who are already parties, suit may proceed, ..... 650
- When the estate passes to a person who is not admitted as a party thereto, such party may be made a defendant by order of court, ..... 649, 650
- By and against executors and administrators, ..... 651
- all actions which survive may be commenced and prosecuted by and against executors and administrators, ..... 651
- they may voluntarily take upon themselves the prosecution or defence of actions commenced by their deceased, ..... 648, 649, 651, 652
- or may be cited in, ..... 648, 652
- judgment, how entered when they do not appear, ..... 648
- they may apply to county commissioners in cases where deceased had a right of

**SURVIVING OF ACTIONS, &c. — continued.**

- application, and did not apply before his decease, ..... 650
- actual damages only to be recovered against executors and administrators for torts committed by deceased, ..... 651
- proceedings in actions by and against executors and administrators, ..... 648, 649, 651, 652  
(See *Executors and Administrators*.)
- SWAMPS.**
- construction of roads to, ..... 722, 723
- SWEARING.** (See *Profane Swearing*.)
- punishment for, ..... 819
- SWINE.**
- when taxable, ..... 76
- less than six months old, exempted from taxation, ..... 75
- found going at large, contrary to law, &c., to be impounded, ..... 135, 136
- one exempted from attachment and execution, ..... 621, 622
- SWORN.**
- word, how construed, ..... 53

**T.****TALESMEN.**

- how returned, and placed on juries for trials, ..... 682
- not more than five to be on such jury, ..... 682
- how returned on coroner's inquest, ..... 648
- in cases respecting highways, ..... 236

**TARPAULIN COVE.**

- on Nashua Island, land at, ceded to United States, ..... 44

**TAUTOG AND BASS.**

- not to be taken in certain places, by persons living out of state, &c., ..... 481, 482

**TAVERNS.** (See *Innholders*.)

- keepers of, to give names of persons taxable and liable to enrolment, to assessors, under penalty, ..... 77, 91
- not to give credit to students, &c., under penalties, ..... 457

**TAXATION.**

- to be by consent of the people, or their representatives, ..... 16

**TAXES — continued.**

- State, may be imposed by general court, ..... 74
- treasurer to transmit warrants for, to assessors, ..... 77
- how to be assessed, ..... 77
- when towns liable for, if not assessed, ..... 77
- deficiency in, without fault of collector, how supplied, ..... 78
- towns liable for, if collector neglects to pay over, ..... 78
- County, estimates for, to be made by county commissioners, ..... 145, 146
- to be apportioned by commissioners according to last state valuation, ..... 146
- not to be assessed till treasurer has rendered his accounts, &c., ..... 149
- how to be assessed, ..... 77
- when towns liable for, if not assessed, ..... 77
- deficiency in, without fault of collector, how supplied, ..... 78
- towns liable for if collector neglects to pay

**TAXES — continued.**

On polls, to be assessed on every male inhabitant above age of twenty years, .....	74
persons exempted from, .....	75
to be assessed where an inhabitant first day of May, except, &c., .....	75
of minors, where parents, &c., reside, .....	75
of minors without parents, &c., in state, as if of age, .....	75
of adults under guardianship, assessed to guardian where taxed for his own poll, .....	75
to be one sixth part of sum to be raised, .....	78
not to exceed one dollar and fifty cents, on one person, exclusive of highway taxes, .....	78
On real estate, in place where it lies, to owner, &c., on first of May, .....	75
mortgagor deemed owner till mortgagee takes possession, .....	75
if paid by tenant, may be recovered of landlord, unless, &c., .....	75
undivided, of person deceased, to heirs, &c., without designating names, .....	75
each heir, &c., liable for whole tax, with right to contribution, .....	75
of person deceased, title to which is in dispute, to estate of such person, .....	75
held as ministerial fund, to treasurer of society in place where it lies, .....	76
On personal estate, to owner in place where an inhabitant on first day of May, .....	75
except	
1st, goods and stock in trade (except vessels owned by copartnership) in places other than where owners reside, .....	75, 76
2d, machinery for manufacturing, .....	76
value of real estate and machinery to be deducted before assessing stockholders for shares in corporation, .....	76
3d, horses, neat cattle, &c., kept throughout the year in places other than where owners reside, and horses in stages, .....	76
4th, property of persons under guardianship, .....	76
5th, property held in trust, .....	76
6th, property deposited to accumulate, .....	76
7th, property of deceased persons, .....	76
held as a ministerial fund, to be assessed to treasurer of society, in place where its meetings are held, .....	76
mortgaged or pledged to the party in possession, .....	76
of copartners, to be taxed jointly where their business is, and each partner liable for whole tax, .....	76, 77
ships, &c., of copartners to the several partners, in their places of residence, .....	77
School taxes, on personal estate and on all lands, if occupied by owner, in district where he lives, .....	222
on land, not improved by owner, in district where it lies, .....	223
on real estate of manufacturing corporations, in district where situated, .....	223
on land of non-residents, in districts where assessors determine, .....	223
on land of a non-resident, in the same district, .....	223
Parish taxes, in owner's parish, wherever estate may be, .....	202
Highway taxes, on polls and estates as other town taxes, .....	245
Watch and fire district taxes, on property within the districts, .....	175, 181

**TAXES — continued.****2. HOW TO BE ASSESSED.**

state, county, &c., to be assessed by assessors, .....	77
penalty on assessors for neglect in assessing, .....	77
if assessors neglect, county commissioners to appoint persons to assess, .....	77
such persons to be sworn, and liable to same penalty as assessors, .....	77
state and county, when towns liable for, if not assessed, .....	77
keepers of boarding-houses, &c., to give names of persons taxable to assessors, under penalty, .....	77
assessors to give notice to inhabitants to bring in lists of polls and property, .....	77
such lists to be under oath, and to be received as true, unless, &c., .....	77
to make fair cash valuation of all taxable property, .....	77
penalties for agreeing to assessment on limited amount, &c., with view to residence, .....	77, 78
assessors to estimate value of property, when lists are not brought in, .....	78
such estimate to be entered in valuation, and be conclusive, unless, &c., .....	78
state, county, and town may be included in one assessment, .....	78
city and county, in Boston, .....	78
one sixth to be assessed on polls, and remainder on property, .....	78
five per cent. may be added for convenience of apportionment, .....	78
list of valuation and assessment to be deposited in assessors' office for public inspection, .....	78
contents of such list, .....	78
to be sworn to by assessors, under penalty, .....	79
form of tax list for collectors, .....	79
list to be committed with warrant for collection, to collector, constable, or sheriff, .....	79
contents and form of warrant, .....	79
if warrant lost, new to be issued, .....	79
assessors responsible only for fidelity in the assessment of certain taxes, .....	80
In watch and fire districts, how assessed, .....	175, 181
In parishes, &c., how assessed, .....	202
In school districts, how assessed, .....	223
Highway taxes, how assessed, .....	245
8. DISCOUNT AND ABATEMENT OF.	
towns, &c., may allow discount on, for punctual payment, .....	79
rates of discount allowed to be posted up by assessors, .....	79
abatement may be made by assessors, to parties overtaxed, upon application, .....	79
costs accruing before abatement to be paid by person applying, .....	79
if assessors refuse, party may make complaint to county commissioners, .....	79
no abatement, unless party has filed with assessors a list, under oath, of his taxable estate, .....	79, 80
nor unless he makes application within six months after date of tax bill, .....	80
if tax has been paid, amount of abatement to be paid out of town treasury, &c., .....	80
persons, whose taxes are abated, entitled to certificate thereof, .....	80
certificate to be exhibited to collector, &c., .....	81
Abatement, &c., of parish taxes, .....	202





**TAXES—continued.**

7. RECOVERY OF TAXES.  
not to be recovered back, unless paid after arrest  
or levy, or under protest,..... 87

**TEACHERS.**

- in public schools, selection, qualifications, &c.,  
of,..... 218

(See Schools.)

**TEACHERS' ASSOCIATIONS.**

- in counties, when entitled to receive money from  
state,..... 212  
money to be paid on certificate, under oath, of pres-  
ident and secretary of,..... 212

**TEACHERS' INSTITUTES.**

- to be established by board of education, on applica-  
tion of fifty teachers,..... 211  
length of sessions of, to be determined by board of  
education,..... 211  
expenses of, how paid, &c.,..... 211, 212

**TELEGRAPH COMPANIES.**

- subject to provisions of General Statutes,..... 372  
lines of, may be constructed on roads, and across  
waters, but not so as to incommode the  
public use,..... 372, 378  
place, height, &c., of, to be regulated by mayor and  
aldermen, or selectmen, &c.,..... 378  
specifications and decisions of mayor, &c., to be re-  
corded in city or town records,..... 378  
owners of land injured by, may have damages as-  
sessed by mayor and aldermen, or select-  
men, &c.,..... 378  
any person aggrieved by such assessment may  
have his damages assessed by a  
jury,..... 378  
costs on assessment of such damages,..... 378  
compensation of mayor and aldermen, and select-  
men, for services,..... 378  
not to commence construction of line, until three  
fourths of stock subscribed for, and certi-  
ficate filed with secretary,..... 378  
debts of, not to exceed one half of capital stock,  
&c.,..... 378  
president and treasurer liable, in case of wilful non-  
compliance with act concerning,..... 378  
to transmit despatches for any company or in-  
dividual, on payment of charges, under  
penalty,..... 378  
responsible for injury to person or property by  
means of their posts, wires, &c.,..... 378  
if erected on highway or town way, damages paid  
by city or town to be reimbursed by com-  
pany,..... 378  
to make annual returns to secretary of common-  
wealth,..... 378, 374  
unincorporated companies subject to the liabilities  
and governed by same provisions of law as  
corporations,..... 374  
no easement obtained by having telegraph posts,  
&c.,..... 374  
penalty for injuring lines, wires, posts, &c., of,..... 374

**TEN POUND ISLAND.**

- ceded to United States for lighthouse,..... 44

**TENANTS.**

- joint and in common, may join in suit for recov-  
ery of premises, or may sue sep-  
arately,..... 692  
under written lease, how estate of may be terminated  
by notice to quit for non-payment of  
rent,..... 472  
forfeit their leases and tenancy, by using premises  
for certain nuisances and unlawful pur-  
poses,..... 454

**TENANTS—continued.**

- remedies against by action,..... 707, 708  
(See Forcible Entry and Detainer.)  
liable for three times actual damages, if they commit  
waste, knowing that an action is pending  
for recovery of the lands,..... 709  
in dower, by the curtesy, for life, or years, or in com-  
mon, how liable for waste,..... 708-710  
paying rent for real estate, if taxed therefor, may re-  
cover of landlord,..... 75  
At will, how estate of may be terminated,..... 472  
At sufferance, liable for rent,..... 471  
such rent, how recovered,..... 471  
For years or for life, not to forfeit their estates by  
conveyance purporting to grant greater  
estate,..... 466  
In tail,..... 466  
(See Estate Tail.)

**TENANTS IN COMMON.**

- how constituted by conveyance or device,..... 466, 467  
lands of, how taken on execution, and with what  
effect,..... 517, 518  
upon dissolution of corporation owning real estate,  
shareholders to be,..... 376  
suits between, may be brought in supreme court in  
equity, and receiver appointed,..... 559  
may sue severally, or all join in actions for land,.... 692  
for years, when may have partition of lands,..... 699  
penalty on, for committing waste while proceedings  
for partition are pending,..... 709  
liable to each other for injury to estate in their al-  
ternate occupancy, after partition,..... 701

**TENDER.**

- only gold and silver coin to be made a,..... 5  
Of payment may be made after money is due and  
payable,..... 671  
may be made with the costs, to plaintiff or his at-  
torney after action brought, and within  
four days before return day,..... 671  
if accepted, plaintiff or attorney to certify fact to  
officer,..... 671  
not valid unless defendant pays officer all further  
costs of service after tender and before  
notice,..... 671  
if not accepted, defendant may avail himself  
thereof upon bringing money into  
court,..... 671  
may be alleged in answer,..... 671  
may be made for damages by United States coast  
survey,..... 46  
of gold by banks, not legal unless it is weighed  
with weights sealed by state treasurer,  
&c.,..... 310  
respondent in complaint for forage may tender  
damages he thinks due, &c..... 758  
if not accepted, and no greater sum recovered,  
respondent to have costs,..... 758  
if accepted, complainant to have judgment  
thereon,..... 758  
Of judgment, (see Offer of Judgment,)..... 660  
In case of casual and involuntary tres-  
pass,..... 709, 710  
By mortgagor, or those claiming under him of  
amount due on mortgage, before or after  
entry,..... 713-715

**TERM FEES.**

- in supreme judicial court, and superior court, ..... 783  
when only one to be allowed,..... 783

**TERMS FOR YEARS.**

- for one hundred years while fifty remain unexpired,  
to be regarded as real estate for certain  
purposes,..... 47

TERJ

of

w

d

u

n

b

TERJ

v

b

TEST

TEST

TEST

THA

ir

THA

le

or

b

THE

p

p

h

p

THR

h

ir

sq

w

THR

fr

TINI

ci

a

p

p

or

TINE

p

TISE

h

---

## TOWNS—continued.

grounds, and all other necessary town charges,.....	158
may appropriate money for support, &c., of public libraries,.....	208
how restrained from illegal appropriations of money, &c., .....	165
may make by-laws, and annex penalties thereto,....	158
how such penalties recovered, and jurisdiction in such cases,.....	158, 608
by-laws to be approved by the superior court,.....	159
duties imposed in, how to be performed,.....	159
binding on all persons coming within limits of town,.....	159
to be published in newspaper in county,.....	159
to provide book-case for books, &c., received from state,.....	159
penalty for neglect,.....	159
to provide fire-proof safes for preservation of records, &c., .....	198
recognizances by, how to be entered into,.....	159
when liable for state and county taxes not assessed,.....	77
may, at annual meeting, allow discount on taxes,.....	79
liability of, if collector neglects to pay state or county taxes,.....	86
remedy of, in such case,.....	87
to furnish ammunition, &c., for militia, under penalty, when required by commander-in-chief,.....	92
may retain possession of certain field-pieces,.....	102
penalty on, for false certificate of selectmen concerning armories,.....	104
for neglect of selectmen in providing cartridges, &c., for militia in case of war, &c., .....	110
officers of, what and how to be chosen at annual meeting, .....	160, 161, 217
penalty for neglect to choose selectmen or assessors,.....	161
may give collectors certain powers of treasurer, when collectors of taxes,.....	165
may make rules concerning the registration of births, marriages, and deaths,.....	170
containing more than ten thousand inhabitants, may appoint registrars to record births, &c., .....	170
to establish schools,.....	215, 216
two adjacent, having less than five hundred families each, may establish high school,.....	216
may establish, &c., schools for persons over fifteen years of age,.....	216
to raise money for schools, under penalty,.....	217
may hold property in trust for support of schools,.....	158
to choose school committee, &c., under penalty,....	217
may increase or diminish number of committee,....	218
to supply books to scholars when change is made, .....	218, 219
may require school committee to appoint superintendent of schools,.....	219
not districted, to maintain school-houses,.....	219
may determine location of school-houses,.....	219, 220
may establish school districts,.....	221
but not to be districted anew oftener than once in ten years,.....	221
may abolish school districts,.....	221
to vote once in three years upon question of abolishing districts,.....	221

## TOWNS—continued.

to choose prudential committee for each district, or authorize district to choose, .....	221, 222
may determine that prudential committees contract with teachers,.....	218, 222
may provide school-houses in district at common expense, .....	223
may raise money in school districts if districts refuse,.....	224
may empower selectmen, &c., to take charge of such money, .....	224
penalties on, for neglect of school committee to transmit returns and report to secretary of board of education,.....	227
may withhold compensation from school committee in such cases,.....	227, 228
liable to damages for unlawful exclusion of child from school,.....	229
may make by-laws, &c., respecting truancy, subject to approval of superior court,.....	280
may appoint truant officers,.....	280
may provide or discontinue almshouses and work-houses, .....	170, 171, 178
not to erect them in other places without consent of such places,.....	171
may choose directors of almshouse,.....	171
any number of, may provide and maintain almshouse jointly,.....	171, 172
directors of such joint almshouses, how chosen, .....	171
may establish a watch,.....	178
to maintain pounds, and appoint pound-keepers,....	185
may choose boards of health, or health officer,.....	188
liability of, for imprisonment of houses, &c., for securing infected articles, &c., .....	191
to provide means of vaccination to those unable to pay, &c., .....	191, 192
may establish quarantine grounds,.....	192
two or more may establish same jointly,.....	192
may establish hospitals for persons having disease dangerous to public health,.....	192, 198
finer under laws relating to health to inure to use of town,.....	198
to provide suitable places for burial-grounds, .....	196
burial-grounds not to be established in, without their consent,.....	196
liable to make specific repairs of highways ordered by county commissioners,.....	238
neglecting to make, &c., highway located, &c., by county commissioners, to pay expense of making to county,.....	238
warrant may be issued against, in such cases, by county commissioners,.....	238
may discontinue town or private ways, at meeting called for that purpose,.....	239
to pay damages occasioned by laying out town way,.....	240
liability of, for neglect to complete town or private way laid out by commissioners,.....	240, 241
not to discontinue town ways, &c., laid out by commissioners, within two years,.....	241
not to lay out again within two years town ways, &c., discontinued by commissioners,.....	241
not to contest legality of way laid out, accepted, and recorded,.....	242
liability of, if selectmen neglect to fix permanent stone bounds at angles of ways in certain cases,.....	244
to keep in repair public ways and bridges,.....	245
to vote sums to be paid in labor and materials for repair of highways, &c., .....	245

TOWNS—*continued.*

may raise money necessary for repair of highways, &c.,	245
may authorize surveyors of highways to contract for repair of ways, &c.,	246
liable to compensate abutters on highways, &c., for damages occasioned by repairs,	247
when liable for damages occasioned by defects in highways,	247
penalty on, for loss of life by defect in highway,	247
for neglect to keep ways in repair, &c.,	247
to erect and maintain guide posts on highways, &c.,	249
to determine places for, and maintain guide posts, under penalty,	249
when may construct sidewalks,	250
may make by-laws to prevent pasturing of cattle, &c., in highways, &c.,	250
such by-laws not to affect rights of abutters on way adjoining their land,	250
may make by-laws to regulate driving over bridges within their limits,	250
may plant shade trees in highways, &c., and appropriate money therefor,	252
to maintain ferries in certain cases,	253
penalty on, for neglect in such case,	253
may regulate sale and measurement of wood, &c.,	278
may authorize selectmen to regulate hawking, &c., of certain articles by minors,	281
may establish by-laws, with penalties, regulating the weighing of lighters, &c., employed in transporting stone, &c.,	291, 292
may use water of aqueduct corporations, for extinguishment of fires,	375, 376
to relieve and support the poor having legal settlement therein,	390, 392
liability of, when paupers are relieved, &c., by other places or by individuals,	398
may send state paupers to state almshouses, &c.,	401
to provide for state paupers, when state almshouses are full, at expense of state,	402
liable for support of paupers in state almshouses, who have a legal settlement in such towns,	402, 403
not to send lunatics, who are dangerous, to state almshouses,	401
may regulate the storage and sale of gunpowder, &c.,	460, 461
may regulate the storage and sale of camphene, &c.,	461
liability of, for damages done by dogs to sheep, &c.,	462
may recover of owners of dogs in such cases,	462
may make by-laws for regulation of licensing and restraining dogs,	463

## TOWN CLERK.

to be chosen at annual meeting,	180
to be chosen by ballot,	181
to be sworn forthwith, if present,	180
to record all votes at town meetings,	162
to administer oaths to town officers, and make record thereof,	162
to record oaths of office of which certificates are filed,	162
when not present at town meeting, clerk pro tempore to be chosen,	162
such clerk to be sworn, and liable to same penalties as clerks, for neglect of duty,	162
when may be appointed by selectmen,	162
to obtain from secretary envelopes for use of voters,	

TOWN CLERK—*continued.*

and keep them subject to order of selectmen,	58
to record number of votes, persons voted for, &c., at elections,	59
to make return of votes sealed up for national, state, district, and certain county officers, within ten days, to secretary,	58, 59
for county treasurer and register of deeds to county commissioners,	59
for county commissioners, within seven days, to clerks of courts,	59
or to deliver such returns, within three days to sheriff,	59
penalty on, for failure to make return of votes,	61
duties of, at elections in towns composing part of a representative district,	65, 66
clerks in such district to meet and ascertain result of election, record votes, &c.,	65
place of meeting, by whom designated,	65
penalties for neglect, and signing false certificates of election,	65
vacancy in office of, at election of representatives, how filled,	66
compensation for services at election of representatives,	66
duty of, respecting return of votes for representatives in congress,	66
penalty for neglect,	69
to transmit returns of enrolled militia to adjutant-general,	91
to preside at election of moderator of town meeting,	190
to give notice to town officers elected, &c., to be sworn,	151
to note time of filing bonds by constables,	154
to record and index facts concerning births, marriages, and deaths,	154
form of record,	163, 164
to give certificate of record of death to undertaker, &c.,	169
to transmit certified copy of record of births, &c., to secretary, annually,	169
record of, concerning births, &c., to be prima facie evidence in legal proceedings,	169
certificate of, to be evidence of such record,	169
fees for services in making record of births, &c.,	169
penalties on, for neglect, &c., in regard to registration,	159
to record proceedings at organization of proprietors of meeting-houses,	203
to deliver school registers, &c., to school committees,	235
to transmit returns and report of school committee to secretary of board of education, in certain cases,	257
to distribute reports of board of education, &c., to school committee, &c.,	257
to record description of location of highway or town way by county commissioners or selectmen,	234, 241
to record notice of lost goods and stray beasts, in book kept for that purpose,	435
to keep record of appointment, &c., of agents to sell intoxicating liquor,	441
to issue licenses for dogs,	461
to post list of dogs licensed, and furnish copy thereof to police, &c.,	461
to issue certificates of intentions of marriage, to parties,	529

**TOWN CLERK—continued.**

penalty on, for issuing such certificates to minors in certain cases,.....	529
may require affidavit of age of parties applying for certificate,.....	569
may administer oaths required in probate matters,.....	577
duty and fees of, as to entering attachments of certain personal property,.....	627
duty and liability as to drawing jurors,.....	681-688
fees of, for certain official services,.....	787

**TOWN MEETINGS.**

annual, to be held in February, March, or April,...	159
other, when selectmen order,.....	159
may be adjourned from time to time,.....	159
qualifications of voters at, in town affairs,.....	159
to be held in pursuance of warrant under selectmen's hands,.....	159
warrant for, how to be directed,.....	159, 160
to express time, place, and purposes of meeting,.....	159
to contain subjects which ten or more voters in writing request,.....	159
may include two or more distinct meetings, ...	159
when may be signed by one selectman, &c.,....	161
how to be notified,.....	159, 160
may be called by minority of selectmen, if majority are dead, &c.,.....	160
may be called by justice if selectmen unreasonably refuse,.....	159, 160
nothing to be done at, unless subject is inserted in the warrant,.....	159
disorderly conduct at, how punished,.....	160
no person to speak at, without leave of moderator,.....	160
how called, if town fails to elect full board of selectmen, &c.,.....	161
when may be called for drawing jurors,.....	681

**TOWN OFFICERS.**

what, to be chosen at annual meeting,.....	160, 161
what, to be sworn,.....	160, 161
if not sworn by moderator, to be summoned for that purpose by town clerk,.....	161
what, to be chosen by ballot,.....	161
what, to be appointed by selectmen,.....	161
penalty on, for not taking oath of office,.....	161, 162
for neglect of duty respecting qualification of voters,.....	57
at elections,.....	61, 66, 69
duties of, at election of electors of president, &c.,...	69
removing from town, vacate their offices,.....	162
vacancy in office of, may be filled at any legal meeting,.....	162
not obliged to serve in same office two years successively,.....	162
certain persons not obliged to serve as constables,.....	162
certain fines, &c., imposed on, how and to whose use recovered,.....	165
emblemment by, how punished,.....	800

**TOWN TREASURER.**

to be chosen at annual town meeting,.....	160
to be chosen by ballot,.....	161
to be sworn,.....	161
to give bond with sureties satisfactory to selectmen,.....	162
vacancy in office of, how filled,.....	162
to have charge of money belonging to town,.....	163
to pay over and account for money according to order of town, &c.,.....	163
may sue on bonds, &c., given to him or his predecessors,.....	163

**TOWN TREASURER—continued.**

to prosecute for forfeitures which inure to town, &c.,.....	163
for trespasses on town property,.....	163
may prosecute for trespasses on building owned by town and county,.....	163
may be appointed collector of taxes,.....	86, 163
may appoint deputy collectors,.....	163
may issue warrant to sheriff, &c., in such case,.....	86, 163
duty of, respecting redemption of real estate sold for non-payment of taxes,.....	85
to prosecute persons refusing to take oath and serve as constable,.....	163
to render account of receipts and payments annually to town,.....	163
compensation of,.....	163
duties of, &c., concerning money raised in watch districts,.....	175
concerning money raised in fire districts,.....	181
concerning money raised in school districts,....	224
on notice from school committee, &c., to prosecute parents, &c., for neglect to send children to school,.....	223
penalty for neglect to prosecute,.....	223
may sue for surplus money in hands of surveyors of highways,.....	247
duties of, in regard to standard weights, measures, and balances,.....	234, 235
to keep separate account of sums received for dog licenses,.....	461
duties of, in regard to payment of damages occasioned by dogs, &c.,.....	462
may commence suits on liabilities made with predecessor, or prosecute those commenced by predecessor,.....	650

**TOWN WAYS AND PRIVATE WAYS.**

provisions concerning laying out, &c.,.....	239-241
---	---------

(See *Highways*.)

**TRADE MARKS.**

of another not to be used without consent, under penalty,.....	298
supreme judicial court may restrain use of, in violation of law,.....	298
forging or counterfeiting, how punished,.....	802
selling goods knowingly with such marks, and not informing purchaser,.....	802

**TRADES, OFFENSIVE.**

provisions respecting,.....	193, 194
-----------------------------	----------

(See *Offensive Trades*.)

**TRAINING FIELD.**

when fences, buildings, &c., to be deemed boundaries of,.....	261
---	-----

**TRANSITORY ACTIONS.**

where to be brought, &c.,.....	620, 621
--------------------------------	----------

(See *Actions*.)

**TRAVEL.**

of members of the general court to be paid from state treasury,.....	21
of commissioners, &c., expenses of, not to exceed three and a half cents a mile,.....	141
costs allowed for, in any court,.....	738
but for not over eighty miles out and back, ....	738
unless party actually travels more than forty miles to attend the court,.....	738
for what distance to be allowed to corporations,.....	738
of justices of the peace,.....	734
of sheriffs and constables,.....	735, 736
of jurors, witnesses, &c.,.....	736
commonwealth to tax no costs for, on <i>scire facias</i> against bail,.....	635

**TREASON.**

no man to be declared guilty of, by the legisla- ture,.....	16
not a ballable offence,.....	886
how defined and punished,.....	7, 790
penalty for concealing,.....	790
misprision of,.....	790
two witnesses required to convict of, &c.,.....	791
attainder of, not to work forfeiture, &c.,.....	7
Petit, distinction between and murder abolished,....	791
how prosecuted and punished,.....	791

**TREASURER AND RECEIVER - GENERAL.**

when, and how chosen,.....	87, 62
return of votes for,.....	69, 60
limitation of tenure of office,.....	27
not to hold certain other offices,.....	30, 88
vacancy in office of, how filled,.....	82, 87
qualifications of,.....	87
neglecting to qualify for ten days, office to be deemed vacant,.....	87
bond to, &c., given by,.....	186
condition of,.....	186, 187
to be deposited in secretary's office,.....	187
to be put in suit when ordered by governor or legislature,.....	187
may be removed by governor, &c., on complaint of sureties, if he absconds, &c.,.....	187
salary of,.....	187
may employ two permanent clerks,.....	187
salaries of permanent clerks,.....	187
may employ additional clerks,.....	187
salary of such clerks,.....	187
to deduct from pay of members of legislature for un- excused absence,.....	48
clerk to certify attendance of members from their written statements,.....	48
such statements to be preserved in treasurer's office,.....	48
annual report of, to be made to legislature,.....	188
contents of,.....	188
may be made in print,.....	68
to transmit, by sheriffs, warrants for state tax, to assessors,.....	77
may recover of town for state tax not assessed,.....	77
to be commissioner on repairs, &c., of state house,.....	184
appointment of watchman of state house subject to approval of,.....	188
when may assign mortgages held by state,.....	187
may sell real estate held by state under mortgage foreclosed, with approval of governor, &c.,.....	187
to stamp all bonds and securities belonging to the state,.....	187
not to transfer securities, &c., without written ap- proval of governor,.....	187
may assign mortgages, &c., made to predecessors, with approval of governor,.....	187
to transmit, annually, to prosecuting officer, ac- count of securities, &c., due, for collec- tion,.....	187
to have custody of money, &c., received for lands in Maine,.....	187
to keep separate account of money, &c., so re- ceived,.....	187, 188
how to invest such money,.....	188
on death, or other vacancy in office of, secretary, &c., to secure property of state,.....	188
when elected, to give duplicate receipts of property, &c., to predecessor,.....	188
to sign notes for money borrowed in anticipation of revenue,.....	189, 140

**TREASURER AND RECEIVER - GENERAL—  
continued.**

to make annual report to legislature of expenses of office,.....	141
to furnish copies of sheriffs' bond to persons apply- ing, &c.,.....	151
to invest school fund, with approbation of governor, &c.,.....	212
with secretary, to apportion income of school fund among towns,.....	212
to have custody of standard weights, measures, &c.,.....	24
to appoint a deputy sealer of weights, &c.,.....	24
to furnish newly incorporated towns with complete sets of standard weights, &c.,.....	24
form of seals to be used by, and by deputy, in sealing weights, &c.,.....	25
when authorized, by act or resolve, to borrow money, to give notice to president or cashier of banks of amount required,.....	35
to equalize amount of demand among the several banks, having reference to amount of obli- gation of bank to loan and to amount previously borrowed,.....	39, 31
penalty for refusing to loan, for thirty days after notice,.....	39
suits to be instituted by treasurer for recovery of penalty,.....	39
banks to furnish statement of amount of capital and of stock paid in to,.....	39
tax to be paid to, annually in April and October,....	39
to commence action if bank neglects to pay,.....	39
to seal weights for banks,.....	39
to hold on deposit, securities deposited by life in- surance companies in certain cases,.....	39
duties of, concerning agents of foreign insurance companies,.....	32
concerning property of deceased persons depos- ited in treasury by public adminis- trators,.....	45, 49
when commonwealth takes possession of rail- road,.....	37
power and duty of, respecting mortgages to the state,.....	77
may receive money due on mortgages, and discharge same,.....	77
may make entry or bring action to foreclose,.....	77
may commence suits on liabilities made with pre- decessors, or prosecute suits already com- menced by predecessors,.....	60

**TREASURERS.**

of corporations, county, city, &c., may commence suits on liabilities to predecessors, and prosecute suits commenced by predeces- sors,.....	60
---	----

**TREASURY OF THE COMMONWEALTH.**

(See Finance.)

money to be paid from, only on governor's warrant, except, &c.,.....	24, 123
cash on hand from ordinary revenue, to be carried to account of ordinary revenue at beginning of year,.....	123
embezzlement by clerks, &c., in, how pun- ished,.....	129, 800
of United States, money how to be drawn from,.....	5

**TREATIES.**

how may be made,.....	6
individual states not to make,.....	5

**TREATING.**

with intoxicating liquors, forbidden at military exer- cises,.....	99
jurors, when cause for new trial,.....	683

**TREBLE COSTS.**

how taxed,..... 781

**TREES.**

on land of tenant for life, with remainder, &c., may be ordered to be cut and sold by supreme judicial court,..... 478

commissioners to be appointed to superintend the cutting and sale of,..... 479

proceeds of such sale, how to be invested, and put in care of trustees,..... 478

income of, to be paid to tenant for life while entitled to profits of land, ..... 478

principal, to belong to remainder-man, when tenancy for life is terminated,..... 478

trustees of such funds may be appointed and removed by supreme judicial court, ..... 478

to give bond,..... 478

on land taken for highways and town ways, owner to be allowed time for removal of, ..... 234, 241

if not removed within time allowed, right to be deemed relinquished,..... 234, 241, 242

time for removing may be extended by jury,..... 237, 342

and by commissioners after verdict of jury, &c.,..... 237, 238

Shade and ornamental, may be planted in highways with consent of selectmen, &c.,..... 261, 262

may be planted at public expense in certain cases,..... 262

how to be removed,..... 262

penalty for injuring,..... 262

liability of owner of beast damaging,..... 262

associations for planting, how formed, powers and privileges of,..... 278

**TRESPASS.**

Actions of tort for, substituted for action of,..... 653

forms in actions for,..... 667

for breaking and entering plaintiff's close, to designate place, &c.,..... 664, 665

may be brought, instead of action of waste, to recover damages suffered for waste by tenant,..... 709

in such case how action may be maintained,..... 709

may be commenced, or if commenced, may be prosecuted against executors and administrators,..... 709

by one joint tenant or tenant in common for cutting trees or committing waste, without notice, or pending petition for partition,..... 709

damages in such case, how recovered and appropriated,..... 709

by committing waste by tenant, knowing that an action is pending for recovery of land, renders party liable to three times actual damages,..... 709

by cutting down and injuring trees, and by other injury to real estate without license, three times actual damages to be recovered, unless defendant believed he had a right,..... 709

Casual and involuntary, trespasser may tender amends therefor,..... 709

in such case, if in an action he disclaims title, and sets forth the tender, and brings the money into court, he may, on proof of facts, have judgment for costs,..... 709

if such tender was not made before action brought, he may disclaim in the action, and bring money into court, and proceedings thereon,..... 709

**TRIALS.**

**IN CIVIL CASES.**

by jury, may be waived in civil cases, and trial had before court,..... 661

exceptions may be taken, new trial granted, and review had as in other cases,..... 661

by jury in actions before justices of peace, how had,..... 606

not to be delayed for want of reply to defendant's answer,..... 661

nor by reason of filing interrogatories,..... 661

in complaints for flowing land, trial may be had in court as in other civil cases, if parties so agree,..... 756

**IN CRIMINAL CASES.**

In examinations before magistrates,..... 827, 828, 832

may be adjourned not over ten days at one time,..... 832

to take place as soon as may be,..... 832, 833

mode of conducting,..... 833

rights of the prisoner as respects witnesses and counsel,..... 833

magistrate may examine witnesses separately,..... 833

testimony may be reduced to writing,..... 833

witness shall sign his testimony when required by magistrate,..... 833

duty of magistrate in discharging prisoner or holding him to answer,..... 833

as to recognizing witnesses, with or without surety,..... 833, 834

magistrate may associate other magistrates of the same county,..... 834

no fees to be taxed for such associates,..... 834

when magistrate may supersede commitment, or discharge recognizance of parties and witnesses,..... 834

On indictments, &c., every party indicted may defend himself, and be heard by counsel,..... 790, 833

shall have a right to produce witnesses, &c., and meet witnesses against him face to face,..... 9, 15, 790, 833

issues of fact, how to be tried,..... 840

no grand juror to be on trial jury,..... 841

prosecuting officers and defendants entitled to challenge jurors as in civil cases,..... 841

peremptory challenges, in what cases, and how many, allowed,..... 841

what opinions disqualify jurors in capital cases,..... 841

form of oath of jurors,..... 841

what jurors may affirm,..... 841

when defendants must be present at trial,..... 841

when and how they may be tried in their absence,..... 841

court may order a view,..... 841

defendant relying upon a written license must prove it,..... 841

what may be shown in defence in case of libel,..... 841

proof as to ownership of property, in prosecutions affecting real or personal estate,..... 841

what time is included in "night time,"..... 841

proceedings, when person indicted is at the time of trial found insane,..... 841

jurors may decide the law and fact,..... 842

duty of the court in such cases,..... 842

If person indicted for felony is convicted of part of charge and acquitted of residue, he may be sentenced,..... 842

**TRIALS — continued.**

proceedings, where defendant is acquitted by reason of insanity,.....	842
persons acquitted not liable for fees or subsistence,.....	842
indictments not vitiated by certain defects of form,.....	842
prosecutions under by-laws of a city or town, who may discontinue,.....	842
persons held in prison shall, if they desire, be tried at next term after six months from time of imprisonment, unless, &c.,.....	840
or shall be bailed on their own recognizance,.....	840
Of capital cases in supreme court,.....	555
exceptions in, may be taken as in other cases, ..	554

**TRIAL JUSTICES.**

appointment, jurisdiction, and powers of, in criminal cases,.....	608-611
(See <i>Justices of the Peace.</i> )	
to make annual returns to secretary of money received by them, and of criminal cases,.....	129
penalty for neglect to make such returns, .....	129
when may authorize arrest and discharge of poor debtors on meane process and execution,.....	638, 635
(See <i>Poor Debtors.</i> )	

**TRICKS WITH CARDS, &c.**

obtaining property by, how punished,.....	570, 609, 802
---	---------------

**TROTting PARKS.**

location and regulation of,.....	825
(See <i>Race Grounds.</i> )	

**TROVER.**

action of tort substituted for,.....	653
form of declaration, and answers in,.....	668-668

**TRUANT CHILDREN.**

towns and cities may make regulations and by-laws with penalties concerning, .....	230
such by-laws to be approved by superior court, .....	230
convicts under such by-laws may be fined or committed to house of reformation, &c.,.....	230
may be committed in default of payment of fine,.....	230
how discharged if unable to pay fine,.....	230
warrants in such cases, where returnable, .....	230
compensation of justice, &c., in such case,.....	230
Truant officers, to be appointed,.....	230
duties of,.....	228, 230

**TRURO.**

land in, ceded to United States,.....	45
---------------------------------------	----

**TRUSTS.**

provisions concerning,.....	500-503
property held by, when and to whom taxable,.....	76
not to be taxed for parochial purposes,.....	202
appraisers of, when appointed, &c.,.....	501
when may be sold, &c., under authority of probate court and supreme judicial court,.....	501, 503
equity jurisdiction of probate court and supreme judicial court concerning, under wills,.....	503
concerning land, not to be created or declared, except by written instrument signed, or by implication of law,.....	502
not to defeat purchaser or attaching creditor without notice,.....	502
recording declaration of, in registry of deeds, to be equivalent to actual notice,.....	502, 503

**TRUSTS — continued.**

suits for enforcement of, to be brought in supreme court in equity,.....	552
proceedings for termination of, when held for benefit of creditors,.....	502

**TRUSTEES.**

for holding trust fund of parishes, &c., how appointed and governed,.....	303
of funds given to towns, &c., and for charitable and religious purposes, to make annual report to selectmen,.....	206
may be removed by probate court, &c.,.....	206
to receive damages allowed for taking land, &c., for highways, how appointed, &c.,.....	234
to give bond, &c.,.....	234, 235
may be appointed by supreme judicial court, when charters of corporations expire, &c.,.....	394
powers and duties of, in such cases,.....	398, 399
when may be appointed to hold proceeds of sale of trust on land held for life, &c.,.....	473
of property awarded to wife upon divorce, may be appointed by supreme court,.....	535
of separate property of married women,.....	536
General provisions,.....	500-503
joint accounts of, may be allowed on oath of one,.....	504
final discharge of, when to be given and recorded, and effect of,.....	504
how to dispose of money not claimed within six months after decree of payment,.....	504
may be authorized by probate court to adjust claims, &c., by compromise,.....	504
and to release, &c., rights or interests of estates represented by them,.....	506
when may be exempted from giving bond for proceeds of sale of real estate,.....	506
provisions respecting new bonds of,.....	506
suits between, may be brought in supreme court in equity,.....	509
may prosecute actions commenced by, and bring actions on liabilities to their predecessors, in certain cases,.....	509
in actions against, in their representative capacity, how demands against those they represent may be set off,.....	509
may effect insurance of trust property in mutual fire insurance companies, &c.,.....	509
not liable in individual capacity on such insurance contract,.....	509
may release damages to land, &c., taken for use of railroad,.....	382
Under deeds, &c., how appointed in case of vacancy, &c.,.....	501
Under wills, to give bond; condition thereof,.....	509
bonds of, may be joint or several,.....	506
to be approved by judge of probate court, &c.,.....	506
when exempted from giving bond,.....	500, 506
when new bond may be required of,.....	506
provisions concerning suits on bonds of,.....	501, 506
neglecting to give bond to be considered as declining trust,.....	501
neglecting to give new bond when required, to be removed from trust,.....	506
may resign trust, .....	501
executors, &c., of, not bound to accept trust,.....	501
may be appointed by probate court, if testator omits, &c.,.....	501



TRUSTEES — *continued.*

powers, rights, and duties in such cases,.....	501
may be removed by probate court, and others appointed, on application of parties,.....	501
may be removed for insanity, &c.,.....	501
may be appointed by probate court or supreme judicial court, when trustee declines, dies, &c.,.....	501
new, to give bond,.....	501
inventory by, may be dispensed with,.....	501
court may order conveyances to, by former trustee, &c.,.....	501
when inventory is required of, appraisers to be appointed, sworn, &c.,.....	501
bonds of, may be put in suit by order of probate court,.....	501
may be required to sell trust property and make investments, &c.,.....	501, 502
probate court and supreme judicial court to have concurrent jurisdiction in equity in matters concerning,.....	503
When minors, married women, &c., supreme judicial court may order sale of trust property, in certain cases, and appoint trustee to sell and convey,.....	502

TRUSTEE PROCESS.

commencement and service of process,.....	720, 729
all personal actions, except replevin, may be commenced by,.....	721, 729
for the recovery of taxes in certain cases,.....	83
any person or corporation may be summoned as trustee in,.....	721
in what counties actions to be brought,.....	721
writ in, to be signed, bear tests, issued, &c., like other writs in civil cases,.....	721
additional trustees may be inserted in writ at any time,.....	721
writ, how served: may be served several times,.....	721
if service is made on trustee after service on defendant, writ to be again served on defendant,.....	721
service on trustee attaches the defendant's property in his hands,.....	723
what property may, and what may not, be attached and held by such process,.....	591, 723, 724
trustee must be summoned in county where he dwells or has his usual place of business; and, if he is summoned elsewhere, effect as to costs,.....	721, 728
if trustee is discharged, writ not to proceed against defendant unless legal service has been made on him,.....	721

APPEARANCE AND ANSWER OF TRUSTEE.

person summoned as trustee must appear and file full answer, under oath, within first ten days of return term of the writ, or before end of term if less than ten days,.....	722
liable to costs, if he fails to appear and answer,.....	723
if trustee is out of state at time of service, and appears and answers at first term after his return, he may have his costs,.....	723
plaintiff may further examine trustee upon written interrogatories,.....	722
answers to interrogatories to be filed in clerk's office within seven days after notice,.....	722
if answers are not full, court may pass order respecting same,.....	722
corporations may answer by cashier, treasurer, sec-	

TRUSTEE PROCESS — *continued.*

tary, or other officer appointed therefor or required by the court,.....	722
answers to be taken as true; but facts not stated nor denied may be alleged and proved by either party,.....	722
such additional facts may be tried by court or jury,.....	722
person summoned as trustee, if he does not appear and answer, to be defaulted and adjudged a trustee,.....	722
persons wilfully answering falsely, liable, in an action of tort, to pay full amount of plaintiff's judgment against defendant, and to be punished for perjury,.....	722

ADVERSE CLAIMANTS.

If the goods and effects, &c., in hands of trustee, are claimed by another person by assignment or otherwise, claimant may voluntarily appear or be summoned in,.....	723
claimant may be admitted as a party respecting his title to the property, and trial how conducted,.....	723
testimony may be taken by deposition or orally,....	723
costs, in such cases, may be allowed between plaintiff, trustee, and claimant, as court orders,.....	729

CHARGING AND DISCHARGING TRUSTEE.

goods, effects, and credits of defendant in hands of trustee, held chargeable, and to respond to final judgment for plaintiff,.....	723
debts, legacies, and other effects, in hands of, or due from, an executor or administrator, held,.....	723
dividends in hands of assignees of insolvent debtors, except upon claim for wages, in certain cases held,.....	723
debts due absolutely, and not upon contingency, although not yet payable, how may be held,.....	723
property in hands of trustee by a conveyance void against creditors, held, although defendant could not maintain action therefor against trustee,.....	723
trustee may set off all demands which he has against defendant, and is chargeable only with balance due from him,.....	723, 724
except unliquidated balance for wrongs or injuries,.....	723, 724
if, after service of process on trustee, and before he has knowledge thereof, he in good faith pays over, or becomes liable to pay, to a third person, the property in his hands, he is not chargeable therefor,.....	724
twenty dollars due for wages of defendant, or for services of his wife or minor children, not to be held,.....	724
when a savings bank is charged as trustee, and there is doubt as to identity of defendant, court may require plaintiff to give bond,.....	724
for what a trustee shall not be chargeable,.....	724

COSTS.

allowed to trustee, who appears and answers as required,.....	727
on trials of issues of facts between plaintiff and trustee, may be awarded by court to either party,.....	727

TRUSTEE PROCESS—*continued.*

- for trustee, when charged, to be retained out of effects in his hands, if he has sufficient; and if not, he may have an execution for balance against plaintiff,..... 727, 728
- trustee, when discharged, to have judgment and execution for costs against plaintiff,..... 728
- allowed to trustee who is out of state at time of service on him, if he appears and answers at first term after his return,..... 728
- if such trustee is summoned in a county other than that in which he dwells or has his usual place of business, he may have his costs, if he appears at any time,..... 728
- may be recovered against trustee, if he fails to appear,..... 728
- how demanded and collected of trustee, in such case,..... 728
- when recovered against more than one trustee in same writ, execution to issue against them jointly; and either one, paying, may have contribution against the others,..... 728
- on scire facias against trustee who is defaulted, to be paid by trustee,..... 728
  - unless it appears that he has paid over, on the execution, all the effects in his hands,..... 728
  - or trustee was prevented from appearing in original suit by absence from state, or sufficient cause, &c.,..... 728
- when to be paid by trustee in original suit, and on scire facias also, one execution for both sums may issue against him,..... 728
- no more to be recovered, in several suits of scire facias, against trustees who might have been joined, than if but one suit had been brought,..... 728, 729
- in case of adverse claimants, may be awarded between plaintiff, claimant, and trustee, as court shall order,..... 729
- not to be allowed to plaintiff in suits, except for necessities, wherein defendant's wages are attached, unless plaintiff recovers five dollars debt,..... 729

## DEATH OF PARTIES.

- if trustee summoned in his own right dies, attachment to continue, and his executor or administrator liable,..... 726
- if he dies before judgment, executor or administrator may voluntarily appear, or be cited in,..... 726
- examination of deceased, which had been filed, to have same effect as if he were living,..... 726
- if executor or administrator does not appear, judgment and execution may be had as if trustee were living,..... 726
- if amount of execution, in such case, is not paid by executor or administrator, scire facias may be brought against him,..... 726
- if trustee dies after judgment, executor or administrator to pay amount on execution, or scire facias may be brought against him,..... 726
- when trustee, against whom execution issues, dies before thirty days after judgment, demand may be made on executor or administrator within thirty days after appointment,..... 726

TRUSTEE PROCESS—*continued.*

- judgment against executors and administrators, how enforced,..... 726
- execution in original suit on scire facias not to issue against their own goods or their bodies, but against the estate of deceased in their hands,..... 726
- if executor or administrator does not pay the amount due on the judgment, remedy for creditors,..... 726

## JUDGMENT, EXECUTION, AND SCIRE FACIAS.

- judgment in original suit need not express amount with which trustee is chargeable,..... 724
- but the amount to be expressed in judgment on a writ of scire facias,..... 724
- if demand is not made within thirty days after judgment, property may be attached and held in other suits,..... 724
- or may be recovered by defendant,..... 724
- but if not attached by a subsequent process, and no action is brought therefor by defendant, and trustee has not paid over, it may, after that time, be demanded and held,..... 724
- demand, how made, when trustee cannot be found in state,..... 724
- judgment against trustee to protect him against defendant for all property accounted for by force of same,..... 724
- discharging trustee to be no bar to an action by defendant against him,..... 724
- if trustee does not pay over to officer upon demand on execution, he is liable to scire facias,..... 724
- scire facias may issue against trustees jointly or severally,..... 724
- if several suits are brought, without sufficient reason, when all trustees might be joined, plaintiff to recover costs only of one suit,..... 724, 726
- if trustee served with scire facias does not appear and answer, and was not examined in original suit, judgment to be entered against him for whole sum due plaintiff and costs,..... 724, 726
- if such trustee appeared and answered in original suit, he shall be charged for such sum as appears, by his examination, and facts proved, to be due,..... 724
- trustee may appear and answer fully on scire facias as he might have done in original suit, and may prove any facts necessary for his defence,..... 724
- judgment in scire facias to be rendered according to whole facts appearing,..... 724
- scire facias to be served within two years after judgment, and not after, unless money was not payable when judgment was rendered,..... 724
- may be served within one year after money becomes due, if not payable at time of judgment,..... 724

## SPECIAL PROVISIONS.

- Mortgaged property, and property on which trustee has lien, how held by trustee process,..... 724
- how may be attached, and mortgagee summoned as trustee and held to answer interrogatories,..... 68

**TRUSTEE PROCESS—continued.**

Suits pending against person when summoned as trustee,.....	723
when defendant in an action is summoned as trustee, first suit not to be delayed, unless by order of court for judgment,.....	723
suit may proceed so far as to ascertain amount due,.....	723
may be continued, on application of plaintiff in trustee suit,.....	723
If not so continued, and judgment is rendered against defendant, he shall not be liable in the trustee process while liable to execution on first suit,.....	723
If, during first suit, defendant is adjudged trustee in trustee process, how he may avail himself thereof, and judgment entered, in first suit, . . . . .	723
Specific goods, in hands of trustee, how disposed of, .....	723, 727
when trustee is charged by reason of specific property which he is bound to deliver to defendant, he shall deliver same to officer on the execution,.....	723
officer to sell such property, and apply same in like manner as if taken on execution in other cases,....	723
value of property, as between defendant and trustee, how determined, . . . . .	723, 727
trustee not bound by trustee process to deliver specific goods at any other time and place than according to his contract,....	727
may, notwithstanding such process, deliver same according to contract, unless he has previously been adjudged trustee,.....	727
when trustee has a lien or mortgage on the goods for a debt, creditor may, on order of court, pay or tender the amount thereof, and trustee shall deliver the same to officer,.....	727
If the property is held for any other security than payment of money, court may make order respecting same, and proceedings thereon, . . . . .	727
goods so taken shall be sold by officer; and, out of proceeds, creditor to be first paid, or indemnified for what he advanced or became liable for to trustee, . . . . .	727
before payment by creditor, trustee shall not be prevented from disposing of the property, if he has authority therefor,.....	727
If trustee refuses or neglects to deliver to officer specific goods for which he is chargeable, he shall be liable to plaintiff for their value, .....	727

**BEFORE JUSTICES OF THE PEACE AND POLICE COURTS.**

all personal actions, except replevin, before justices of peace and police courts, may be brought by trustee process,.....	729
foregoing provisions, so far as applicable, to apply to actions so brought,....	729
writ may run into any county for service on defendant, in certain cases, and how served, . . . . .	729
trustee not held to answer in any county except where he dwells or has his usual place of	

**TRUSTEE PROCESS—continued.**

on him, and does not return before final judgment, he shall not be chargeable, .....	729
trustee may appear by himself or attorney, and declare in writing that he had not, at time of service of writ, any goods, effects, &c., and submit to an examination on oath, .....	729
If, in such case, plaintiff declines to examine him, or his declarations appear to be true, he shall be discharged,.....	729
examination to be on written interrogatories, and sworn answers,.....	729
If trustee admits effects in his hands, or wishes to submit the question to court, he may make full answer on oath, and may be further examined,.....	729
all declarations, interrogatories, and answers to be filed, .....	729
trustee costs, amount of, and how taxed,.....	729
scire facias against trustee may be issued by justice or court before whom judgment was recovered, although the debt and cost amount to a sum beyond their ordinary jurisdiction, .....	729, 730
<b>TUMULT</b> (See Riots.)	
how suppressed,.....	815, 816
<b>TURF.</b>	
punishment for wilfully digging up, &c., without authority, .....	805
<b>TURNKEYS IN STATE PRISON.</b>	
number, appointment, salary, duty, &c.,....	870, 871, 873
<b>TURNPIKE CORPORATIONS.</b>	
shares in, to be personal estate,.....	844
to be transferred by deed acknowledged and recorded by clerk of corporation,.....	844
provision as to erection of gates, .....	843
may petition county commissioners for permission to remove gates, &c.,.....	844
rates of toll allowed to be taken,.....	844, 844
board containing, to be erected at every gate, .....	844
may commute the rates of toll with any person,....	845
of whom toll shall not be demanded or received,..	845
penalty for passing, &c., gates, without paying toll, .....	845
for going round a gate, and entering on the road again to avoid toll,.....	845
for making passage way, &c., to avoid toll,....	845
for giving false answer to toll-gatherer, and thereby going toll free, .....	845
on corporation, for creating illegal toll, . . . . .	845
on corporation for toll gatherer's hindering travellers, .....	845
all above penalties accruing to corporations may be sued for by their treasurer in an action of tort,.....	845
carts or wagons with more than forty-five hundred pounds' load not to pass on road, unless with broad wheels,.....	845
drivers of loaded carts, &c., with narrow wheels, to give account of the weight of their loads, &c., if requested, .....	845
penalty on, for misrepresentation,.....	845
for locking, &c., wheels without putting iron shoe under them,....	845
liability of, for injury sustained by persons chargeable with toll, by reason of roads being out of repair, .....	845, 846

**TURNPIKE CORPORATIONS—continued.**

provisions for commissioners to lay out turnpike roads as highways,.....	846
proceedings, in such case, to be as in laying out highways in other cases,.....	846
what damages shall be allowed in such case, by whom to be paid, and how payment thereof may be enforced,.....	846
duties, &c., of, to cease, when their road is established as a highway,.....	846
established after March 16, 1806, shall exhibit yearly to governor and council an account of their income and necessary disbursements,.....	846
books of, subject to inspection of governor, council, and legislature,.....	846
when road of such corporation is out of repair, county commissioners may cause gates to be set open till they otherwise order,.....	846, 847

**TURNPIKE CORPORATIONS—continued.**

toll not to be demanded until commissioners revoke their order,.....	847
such corporation may be dissolved by legislature,.....	847
not more than twenty cattle or horses to be on bridge of, without consent,.....	847
not liable for loss of cattle, loads, &c., caused by breaking of bridge, if driven upon it contrary to law, and without consent,.....	847
no corporation liable for deficiency in its bridges when carriage and load exceed weight of six tons,.....	847, 848
road of, how raised or lowered by railroad corporation,.....	856, 857
may assign franchises to railroad corporations, with consent of county commissioners, &c., or superior court,.....	859
damages, how estimated in such case,.....	859

**U.****UMPIRE.**

corruption of, how punished,.....	818
acceptance of bribes by, how punished,.....	818

**UNCURRENT BILLS. (See Bank Bills.)**

punishment for having in possession, with intent to pass, and for passing,.....	810, 811
sheriff to seize and destroy,.....	811

**UNDERTAKER.**

to make return to town clerk of certain facts respecting deaths,.....	169
compensation for such return,.....	169
to give notice of burials made without certificate of town clerk, under penalty,.....	169

**UNIFORM, &c.**

of officers and soldiers exempted from attachment, execution, &c.,.....	102, 688
---	----------

**UNITED STATES.**

words, include territories and District of Columbia,.....	51
constitution of, analysis,.....	1, 2
officers of, except postmasters, excluded from certain state offices,.....	88
jurisdiction of, in places ceded, concurrent, &c.,.....	43-45
coast survey, officers of, may enter upon, &c.,.....	45
damages thereby, if not agreed upon, may be assessed by county commissioners, subject to appeal to superior court, tender, costs,.....	46
penalty for injuring monument, &c., erected for,.....	46
property of, exempt from taxation,.....	74
judicial and executive officers of, exempted from military duty,.....	92

**UNITED STATES—continued.**

stocks of, &c., capital of certain companies to be invested in,.....	33
may use jails, except in cases arising under the acts of congress concerning fugitives from service and labor,.....	56
when to have priority in distribution of estates of insolvent debtors,.....	59
statute laws and judicial proceedings and records, how proved, &c.,.....	63
in prosecutions for forgery, &c., when certificate of treasurer of, &c., to be evidence,.....	80
what officers of, exempt from serving as jurors,.....	679, 680

**UNIVERSITY AT CAMBRIDGE, (see Harvard College.).....****UNLAWFUL ASSEMBLIES. (See Riot.)**

how to be suppressed,.....	515, 516
----------------------------	----------

**UNLAWFUL GAMES.**

those using, how to be arrested and punished,.....	631, 632
--	----------

**UNLAWFUL USE.**

of another's property, but not with intent to steal, how punished,.....	861
---	-----

**UNMARRIED FEMALE, &c.**

property of, to amount of five hundred dollars, when exempted from taxation,.....	74
---	----

**UNWRITTEN LAWS.**

of foreign countries and of other states, &c., how proved,.....	63
---	----

**USURY.**

provisions concerning,.....	22
-----------------------------	----

**V.****VACCINATION.**

children to be vaccinated before two years old,.....	191
not to attend public schools until vaccinated, ..	229
when to be revaccinated,.....	191
liability on parents, &c., for neglect,.....	191
vaccination of all inhabitants may be enforced, when, &c.,.....	191

**VACCINATION—continued.**

penalty for neglect,.....	191
means of, to be provided by towns for those unable to pay,.....	191
of inmates of public institutions, &c.,.....	191, 192
further provisions for, may be made by towns,.....	192

**VAGABONDS.**

and rogues, how to be arrested and punished, . . . 820, 821

**VALUATION OF ESTATES.**

to be taken once in ten years at least, . . . 18

**VARIANCE.**

in civil actions, amendments may be made to enable parties to sustain their cases for causes intended, . . . 668  
acquittal because of, between indictment and proof, no bar to new indictment, . . . 790  
what shall not be deemed, in allegations of intent to defraud, in cases when such intent constitutes the offence, . . . 809  
in certain cases of embezzlement, . . . 800  
in offences upon real or personal estate, as to ownership thereof, . . . 841

**VEGETABLES.**

to be sold by dry measure, under penalty, . . . 284

**VEHICLES, (see Carriages,)** . . . 167, 428, 801

**VENIRES.**

for jurors, how issued, served, &c., . . . 680, 681, 682, 683

**VENUE.**

of actions, . . . 620  
in transitory actions, where either or neither party lives in state, . . . 620  
where land lies in different counties, . . . 620, 621  
by and against counties, . . . 621  
towns, cities, parishes, and school districts, . . . 621  
other corporations, . . . 621  
the city of Boston, . . . 621  
in actions for the recovery of forfeitures, . . . 621  
not changed by laws relating to pleading and practice, . . . 662  
when a local action is brought in an erroneous venue, court may order a non-suit, or the trial to proceed, . . . 661  
when judgment is rendered in a local action brought in an erroneous venue, how execution shall be directed, . . . 686  
judgment not to be arrested or avoided on writ of error in civil action, by reason of mistake in, . . . 745

**VERDICTS.**

to bear interest, . . . 685  
may be set aside and new trials granted by courts in which the same are rendered, . . . 566  
rules respecting forms of, may be made by courts, so as to place on record findings of juries, . . . 566  
acquitting of part of offence charged and convicting of residue, when may be received, . . . 842

**VESSEL.**

word, how construed, . . . 290

**VESSELS.**

where and to whom taxable, . . . 74, 75, 77  
piloting of, . . . 287-288  
penalty for boarding in certain harbors without leave, except by pilots, &c., . . . 290  
for not leaving, when ordered, after having so boarded, . . . 290  
for enticing away crew of, . . . 290  
for inducing seamen to leave who have received advanced wages, . . . 290  
how recovered in such cases, . . . 290  
what to be deemed limits of certain harbors, in such cases, . . . 290  
record not necessary to validity of mortgage of, . . . 767  
lien on, . . . 768, 769  
punishment for wilfully casting away, &c., . . . 804, 805

**VESSELS—continued.**

punishment for breaking and entering, and larceny therein, . . . 797  
Weighers of, and of lighters, for transporting stone, &c., how appointed, . . . 290  
to be sworn, . . . 290  
to cause such vessels to be weighed and marked, . . . 291  
to furnish requisite marks, and affix them, . . . 291  
how to mark vessels, &c., . . . 291  
to keep account, and give certificate to master, of distance of marks, . . . 291  
fees of, and by whom paid, . . . 291  
penalty on, for falsely placing marks, or false certificate, . . . 291  
how to be marked to express weight which they will carry, . . . 291  
deduction, how made in taking tonnage of, . . . 291  
persons on board of, where to be stationed during marking, &c., . . . 291  
penalty for not remaining in such station, . . . 291  
marks of, to be examined annually, . . . 291  
proceedings if marks do not agree with former certificate, . . . 291  
penalty on owner and master of, for neglect to have such vessels weighed, &c., . . . 291  
cities and towns may establish ordinances, with penalties, regulating weighing and marking of, &c., . . . 291, 292

**VESTRY.**

when to be a corporation, together with minister, &c., to take and hold grants, &c., . . . 205  
conveyance of land by church wardens, not valid without consent of, . . . 206

**VETO.**

of president of United States, . . . 4  
two thirds of both houses may pass bill over, . . . 4  
of governor, . . . 17  
two thirds of both houses may pass bill over, . . . 17

**VICTUALLERS, (see Innholders,)** . . . 455, 456

**VIEW.**

court may order, by jury, in criminal cases, . . . 841  
by jury, may be ordered in actions for waste, . . . 709  
may be had by order of court, at request of either party, in any case, . . . 683  
expenses of jury in such case, how paid and taxed, . . . 683

**VISITORS.**

to state prison or convicts, provisions respecting, . . . 875

**VOTERS.**

qualifications of, . . . 19, 38, 39, 56, 169  
to be able to read the constitution in English, and write name, . . . 38  
naturalized citizens to be, after two years' residence, . . . 39  
census of, when and how to be taken, . . . 39, 39, 167, 168  
selectmen, &c., to make lists of, and post, ten days before elections, . . . 56  
to meet to receive evidence of qualifications, . . . 56  
to give notice of meeting on posted lists, . . . 56, 57  
when to meet if voters exceed one thousand, . . . 57  
to correct lists, . . . 57  
to require proof of naturalization, . . . 57  
when not answerable for omissions, . . . 57  
penalty for giving false answer to, . . . 57  
penalty on town, &c., officers for neglect of duty, . . . 57  
presiding officer at elections to be provided with list of, . . . 58  
no person to vote unless his name is on list of, . . . 58

**VOTES. (See Elections.)**

## W.

## WAGES.

- sums due for wages of defendant, or his minor children, to extent of twenty dollars, not to be held by trustee process, except for necessities,..... 724
- when attached by trustee process, except for necessities, plaintiff to have no costs, unless he recovers five dollars debt,..... 729
- of operatives, when entitled to preference in distribution of estates of insolvent debtors,..... 594, 595
- in manufacturing establishments, how recovered of stockholders,..... 386

## WALNUTS.

- to be sold by the strike or level measure,..... 264

WARDS, (see *Guardian*). .... 548-547

## WARDEN OF STATE PRISON.

- appointment, duties, &c.,..... 870-875
- to notify commissioner of insanity of convict,..... 878
- duty of, in such cases,..... 878
- duties of, when those pardoned violate conditions of pardon,..... 855, 856

(See *State Prison*.)

## WAREHAM.

- provisions for regulation of fisheries in,..... 432

## WARRANT.

## IN CRIMINAL CASES.

- how signed, issued, &c., by justices of the peace and police courts,..... 571, 572, 608
- may be issued by judges, &c., of police court, when court not in session,..... 570
- issued by police courts and justices of the peace, where to be made returnable,..... 570, 571
- fees for, not to be allowed justices in certain cases,..... 570, 608
- issued by police courts, to be returned as specified therein, with return of officer who had the same indorsed thereon,..... 571
- to make search or arrest, to be supported by oath and accompanied with a special designation of the object of search or arrest,..... 15
- not to be issued except as prescribed by law,..... 16
- to make search for liquors unlawfully kept, &c., when to be issued,..... 445
- not to be issued for search of dwelling-houses, unless, &c.,..... 445
- place to be searched to be described, &c.,..... 445
- proceedings under, in such cases,..... 445
- form of, &c.,..... 450, 451
- costs in proceedings in,..... 446, 447
- to arrest person charged as being a fugitive from justice,..... 854
- in capital cases, how to be executed, and return thereof,..... 847
- of distress may issue against corporation indicted and convicted, to compel payment of the penalty,..... 847

## IN CIVIL CASES.

- to summon jurors for coroner's inquest,..... 848
- penalty on constable for neglecting or failing to execute,..... 848
- of distress, in favor of state, how debtor imprisoned on, may be discharged on taking poor debtor's oath,..... 689

## WARRANT—continued.

- from court of insolvency, to be under seal in all cases,..... 522
- for taking possession of debtor's estate, form of, &c.,..... 522, 523
- fees for service of,..... 501

## WASTE.

- penalty on joint tenants, and tenants in common, for strip or waste without notice or during pendency of process for partition,..... 719
- damages in such case, how recovered by other co-tenants and divided,..... 719
- equity jurisdiction of supreme court, in case of waste,..... 559
- injunction to stay, may issue by one judge of supreme court in term time or vacation,..... 719
- such injunction may be dissolved by single judge in term time or vacation,..... 719
- committed or threatened when land is attached, or when an action is brought to foreclose a mortgage, or for possession under same, or for recovery of land, injunction may be issued,..... 719
- in such case court may require applicant to give bonds,..... 719
- if injunctions are violated, court may commit defendant, and issue process proper to enforce obedience,..... 719
- court, in which suit is pending, may dissolve injunction at any time,..... 719
- how stayed or prevented by injunction when suits in equity or actions of tort are pending concerning nuisances,..... 711
- Scire facias may be brought on suggestion of, when execution against an executor, &c., is returned unsatisfied,..... 651
- may be brought in such case before justices of the peace,..... 686
- may be brought against executors and administrators when they neglect to pay on judgment in trustee process,..... 725
- Action of, may be brought by person having next estate of inheritance, against tenant in dower, by curtesy or for years, committing or suffering waste,..... 705
- may be brought by heir for waste done while ancestor lived,..... 705
- issue of fact joined in, to be tried by jury,..... 705, 719
- plaintiff may recover place wasted and damages,..... 705
- damages to be assessed by jury,..... 719
- Action of tort, in nature of waste, may be brought instead of action of waste,..... 719
- may be maintained by persons having remainders and reversions, in fee simple, fee tail, after an intervening life estate, or for life or years,..... 719
- damages may be recovered in such action,..... 719
- may be commenced, or if commenced, may be prosecuted against executors and administrators,..... 719
- may be maintained against tenant who commits waste during pendency of action to recover lands, and three times amount of damages recovered,..... 719

# INDEX.

## WATCH AND WARD.

may be established by cities and towns, .....	178
expense of, to be defrayed like other town charges, .....	178
officer of, to be appointed, .....	178
powers and duties of watchmen, .....	178
badges and weapons of watchmen, .....	178
selectmen may order, when none is established, .....	178
may determine number of watch, &c., .....	178
may order constables, &c., to warn persons to attend, &c., .....	178, 174
persons liable to duty of, .....	174
exempt from duty, .....	174
penalty on persons liable to duty, for neglect to appear, &c., .....	174
on constables, watchmen, &c., for refusing to execute orders, .....	174
how and to whose use recovered, .....	174

## WATCH DISTRICTS.

may be established in villages of not less than one thousand persons, .....	174
meetings for organization, how called, .....	174
proceedings when village is situated in two or more towns, .....	174
clerks of, to be chosen and sworn, .....	174
may be removed or may resign, .....	174
in case of vacancy another may be chosen, .....	174
to certify to assessors of town amount of money to be raised, .....	175
prudential committee to be chosen by ballot and sworn, .....	174
to consist of not less than three nor more than five persons, .....	174
to have superintendence of watchmen, management of money, &c., .....	175
annual meeting for choice of officers, how and when called, .....	174
moderator to be chosen, .....	174
clerk to preside until moderator is chosen, .....	175
may raise money for payment of watchmen, &c., .....	175
such money to be assessed and collected in same manner as town taxes, .....	175
duty of prudential committee and assessors when district is situated in different towns, .....	175
territory adjoining, how may be annexed to, .....	175
heretofore organized, to continue, &c., .....	175

## WATCHMEN.

refusing to assist, how punished, .....	818
falsely assuming to be, how punished, .....	814
of state house, how and when appointed, .....	183, 184
duties and salaries of, .....	184
to receive no fee for opening rooms for view of visitors, .....	184
in state prison, number, appointment, salary, duty, &c., .....	870-873
Assistant, in state prison, appointment, duties, and pay of, .....	870, 871

## WATER.

wilfully and maliciously corrupting, &c., .....	823
---	-----

## WATERCOURSES.

in roads, how regulated, .....	246
--------------------------------	-----

## WATER RIGHTS.

owned by tenants in common, may be divided upon petition for partition or suit in equity, .....	708
in a navigable stream, may in like manner be partitioned in certain cases, .....	708

## WATERTOWN.

land in, for forts, arsenals, &c., ceded to United States, .....	44
--	----

## WAY. (See Highways.)

punishment for opening, through & without consent, .....
laying out, &c., .....

## WEARING APPAREL.

exempted from taxation and distress & allowed to widow and minor children, .....
person, .....
what exempt from attachment at

## WEIGHERS.

Public, and their duties, .....
Of beef, how appointed, .....
not to be dealers in cattle, .....
to be sworn, .....
fees of, for weighing, .....
Of hay, how appointed, term of office duties and fees of, .....
may be removed, .....
Of coal, how appointed, &c., .....
not to be dealers in coal, .....
to be sworn, .....

## WEIGHTS, MEASURES, AND BAL.

congress may fix standards of, .....
what to be authorized standard state, .....
Standards of, to be kept by treasurer wealth, .....
to be replaced when necessary, and &c., .....
treasurer to furnish duplicate deputy, .....
deputy to be sworn and give bond to keep duplicates, and seal weights complete sets of, to be furnished of newly incorporated town furnished by state, to be kept as treasurers at expense of &c., .....
penalty on treasurers of county neglect to keep in repair, & to be proved and sealed once in expense of county, &c., .....
penalty on treasurers for neglect, Sealers of, one or more to be appointed, unless chosen, .....
each to have a set of standards, .....
accountable to towns for preservation, .....
to have seals, .....
form of seal, .....
to notify inhabitants to have weights to prove hay scales, &c., annually not to remove standards except pose, .....
penalty on, for neglect of duties, fees of, .....
penalty for selling by, unsealed, .....
" hundred weight " to be constructed hundred, .....
who to be deemed public weighers, .....
rules for weighing, .....
penalty on weighers for neglect, &c., special provisions for measurers of &c., .....
not to prevent measuring salt measures used by government States, .....
weights of banks to be sealed by treasurer in five years, .....
tender of gold by banks, weighed weights, &c., not valid, .....

**WELLFLEET.**

land in, ceded to United States,..... 45

**WELLS.**poisoning, how punished, ..... 794  
wilful and malicious corrupting, defiling, &c., how  
punished,..... 828**WEST CHOP.**

land at, ceded to United States, ..... 44, 45

**WESTPORT.**land in, ceded to United States,..... 45  
penalty for taking fish in waters of, by persons living  
out of state,..... 481**WHARVES, &c.**how proprietors of, may become a corporation,..... 879  
justice of peace may call meeting, &c., ..... 879  
notice of first meeting, how given,..... 879  
organization of proprietors,..... 879, 880  
moderator's powers, &c.,..... 880  
clerk, treasurer, collector, &c., may be chosen,  
..... 879, 880

tenure of their office,..... 880

clerk to be sworn, and to record all votes, &amp;c.,..... 880

treasurer to receive and pay out money, &amp;c.,..... 880

proprietors may sue and be sued, &amp;c.,..... 880

not to sue individually, and also as corporation  
for the same injury, ..... 880

may make by-laws, &amp;c., ..... 880

by-laws, with penalties annexed, to be approved  
by county commissioners, &c., ..... 880

powers of, at legal meetings,..... 880

to vote according to shares of each,..... 880

may raise money by assessments, &amp;c.,..... 880

shares of, may be sold to pay assessments,..... 880

notice of sale, how to be given, &amp;c.,..... 880

how redeemed, after sale,..... 880, 881

when proprietors may sell, &amp;c.,..... 881

may, after division, hold meetings, and do all  
acts necessary to close their business, .... 881how long, after division, they may act as a cor-  
poration, ..... 881records of, after final division, where to be de-  
posited,..... 881**WHEAT.**

standard weight of bushel of,..... 265

provisions concerning sale of,..... 265

**WIDOW.**property of, to amount of five hundred dollars, when  
exempted from taxation,..... 74, 75to have dower in lands of her husband unless law-  
fully barred,..... 469

in lands taken on execution,..... 524

may occupy lands in which she is entitled to dower  
in common with heirs, with their as-  
sent,..... 470dower of, may be barred by jointure or pecuniary  
provision before marriage,..... 470may waive such jointure, &c., if made without her  
assent, within six months after death of  
husband, ..... 470

not to be endowed of wild lands,..... 470

if evicted of lands assigned to her as dower, or joint-  
ture, &c., may be endowed anew,..... 470of intestate without issue, to take half of real estate  
for life, &c.,..... 470, 471

or may have dower, if she so elects,..... 471

undivided estate of, in lands of her husband, may be  
set off same as dower,..... 471endowed in lands devised for one hundred years,  
&c., liable for part of rent to the owner of  
residue of term,..... 471right of, to dower, &c., not affected by advancement  
to heirs, ..... 475**WIDOW—continued.**may waive provision in husband's will, and be  
entitled to property as if he died inte-  
state,..... 478if she makes no waiver, not to be endowed of lands,  
unless it plainly appears by the will that  
the provision therein was in addition to  
dower,..... 479

claim of, to administration of husband's estate,..... 483

allowance to, from funds in hands of special adminis-  
trator,..... 484to be entitled to one third of residue of personal  
estate of deceased husband, after pay-  
ment of debts, &c.,..... 485in distribution of personal estate to, advancement to  
issue not to be computed,..... 485if no issue, to be entitled to five thousand dollars  
and one half of excess over ten thousand  
dollars of residue,..... 485

to be allowed her apparel and ornaments,..... 489

provisions for sustenance and use of husband's  
house, &c., for forty days, ..... 471, 489such provisions for herself and children as cir-  
cumstances require,..... 489homestead rights to continue for benefit of, after  
husband's death, &c., ..... 528

may be set off to,..... 528

may join in sale of such homestead, &amp;c.,..... 528

provisions concerning the assignment of dower,  
..... 489, 479

(See Dower.)

**WIFE, (see Married Woman,)**..... 390, 488, 533-535, 526**WIGWAM POINT.**

land on, for lighthouse, ceded to United States,..... 44

**WILFUL.**injury to burial grounds and appurtenances, grave-  
stones, &c.,..... 521, 522

disturbance of religious meetings,..... 519

of camp-meetings,..... 519

of schools or other lawful assembly,..... 520

of funeral procession,..... 520

making false entry in prison book by jailer,..... 566

**WILFUL AND WANTON.**destruction by convict, of property in jail or house of  
correction, how punished,..... 522**WILFUL AND MALICIOUS.**

killing of horses, cattle, &amp;c., how punished,..... 805

poisoning, or administering or exposing poison to  
them,..... 805injury to, or removal of, boundaries, guide boards,  
mile stones, &c.,..... 808

defacing inscriptions thereon,..... 808

extinguishment of lamps, &c., removal of lamp-  
posts, &c.,..... 808

defacing any building,..... 808

removing railings, &c., from bridges, streets,  
&c.,..... 808injury, &c., to any church, school-house, furniture,  
or appurtenances thereof,..... 808dwelling or building, by explosion of gunpowder,  
&c.,..... 808, 804

by oil of vitriol, coal tar, &amp;c.,..... 804

dams, mills, &amp;c.,..... 804

ice intended for merchandise, ..... 804

of toll bridges, gates, canal locks, embank-  
ments, &c.,..... 804of ship or vessel, to injure owner or in-  
surer,..... 804, 805

horses, cattle, &amp;c.,..... 805

fruit and ornamental trees,..... 805

glass, fences, &amp;c.,..... 805, 806

personal property of another,..... 806



# INDEX.

## WILFUL AND MALICIOUS—continued.

injury to bank bills, how punished,.....	810
taking of another's property, but not with intent to steal, how punished,.....	801
corrupting wells, springs, reservoirs, &c.,.....	828

## WILFUL TRESPASS.

by cutting timber, grain, &c.,.....	806
by entering gardens, orchards, &c., with intent,....	806
how, when done on Lord's day,.....	806
to fruit or forest trees on the Lord's day,.....	806
persons injuring, may be arrested without warrant,.....	806
and be detained not over twenty-four hours,....	806
killing or frightening pigeons from beds, how punished,.....	806
person so doing, liable to owner, &c., of such beds,.....	806
(See <i>Wilful and Malicious</i> .)	

## WILL.

to include "codicil,".....	52
may be made by persons of full age, of all real estate, and all right to and interest in the same, except estates tail,.....	476
and of all personal estates, and rights to and interests in the same,.....	476
how made by a married woman,.....	588
property disposed of by, to be subject to payment of debts of testator,.....	476, 479
real estate devised by, first liable for debts, unless different provision is made by will,.....	480
shall pass devisee's right to land, though he be not seized at time of making it, or be disseised afterwards,.....	476
shall pass estate, &c., in land, acquired after it is made, if such be his manifest intention,.....	476
shall be construed to convey all devisee's estate which he could lawfully devise, unless it clearly appears that he meant to pass a less estate,.....	476
giving land to one for life, and to his heirs in fee, to vest estate for life in first taker, and remainder in fee simple in his heirs,.....	466
giving land to two or more, to create estate in common, and not in joint tenancy, unless expressly provided, &c.,.....	466
exception, in such case, if devise be made to husband and wife, or in trust,.....	467
not to pass or affect any property, unless written and signed by testator, &c., and subscribed in his presence by three or more competent witnesses,.....	476
or made in conformity to laws existing at time of,.....	476
or if made in conformity to laws of state, &c., where made,.....	476, 477
or nuncupative will, made by soldier in actual service, or mariner at sea,....	477
if witnesses are competent at time of attesting, subsequent incompetency, not to prevent probate thereof,.....	476
devise to attesting witness of, void unless there are three other competent witnesses,.....	477
by what acts may be revoked; revocation of, may be implied by law,.....	477
may be deposited in registry of probate, and shall be received and kept by register,.....	477
provisions for sealing, securing, &c., in such case,.....	477
to whom to be delivered,.....	477

## WILL—continued.

when to be opened by probate or not effectual to pass any property, and allowed in probate of, conclusive as to due cases,.....	
person having custody of, (ex parte,) to deliver to probator, within thirty days of testator's death,.....	
punishment, &c., for neglect being cited by judge in proceedings against persons sealing,.....	
costs in such cases,.....	
when probate of, may be granted to subscribing witness on appeal from probate of, who be tried by jury, in court,.....	
provisions in, may be waived, dower may be assigned of, &c.,.....	
omission in, to provide for child, defect their inheritance had provided for their omission was intentional	
posthumous child, not provided as if father died intestate, &c., under, to contribute, omitted, or posthumous cases,.....	
if devisee dies before testator, hereby devised, unless, &c.	
if any estate devised is taken by debts, other devisees, unless different provision made by will,.....	
share of child omitted, or posthumous contribution as devisee in proceedings in suits for contribution,.....	
devisees, unless exempted by will, equally when dower, &c.,.....	
letters testamentary on, when granted by probate court, or letters of administration, if accepted, &c., or is not accepted of, if legally competent letters testamentary,.....	
to give bond, except in certain conditions of bond,.....	
when residuary legatees, or give bond to pay &c.,.....	
such bond not to discharge real estate of testator, executors of executors, not to first testator,.....	
administrator with will annexed, &c.,.....	
penalty for larceny, or fraudulent indictment need not allege ship,.....	
certain disclosures not to be	
PROVED AND ALLOWED IN A COUNTY.	
may be allowed, &c., in this state where there is proper operation,.....	

**WILL—continued.**

what notice to be given, before such will is allowed,.....	478
if allowed, copy thereof, and of the foreign probate, to be filed, &c.,.....	478
such will not valid, if made in this state by an inhabitant thereof, unless executed, &c., as required by laws of this state,.....	478
when allowed, &c., estate to be settled as in other cases,.....	478

**WINDOWS.**

overlooking land of another, easements of light, &c., not acquired by,.....	472
---	-----

**WINE.**

undiluted, may be sold for sacramental purposes,.....	442
---	-----

**WINTHROP.**

to vote with Middlesex county for county commissioners,.....	71, 72
return of votes in, for county commissioners and register of deeds, to whom made,.....	96
county commissioners of Middlesex to have jurisdiction in,.....	148, 242
not to be taxed for county purposes,.....	78
to have no interest in county property of Suffolk,....	144

**WITHERNAM.**

writ of, to be called writ of reprisal,.....	788
when to be issued,.....	738

**WITNESSES.**

may be summoned before any person authorized to examine them,.....	672
by any clerk of a court of record, or by a justice of the peace,.....	672
summons for, how served,.....	672
not obliged to attend unless fees for one day's attendance and travel are first paid or tendered,.....	672
neglecting to attend when summoned, liable to damages, and to punishment for contempt of court,.....	672, 678
may be brought in on warrant to testify and to answer for contempt,.....	678
may be sworn by arbitrators, referees, and auditor,.....	678
may be sworn and compelled to testify by judges of court of insolvency,.....	581
to be sworn according to mode heretofore practiced,.....	678
may be sworn according to their own peculiar mode, in certain cases,.....	678
who are Quakers, or have conscientious scruples as to taking an oath, may affirm,.....	678
believing in any other than the Christian religion, how sworn,.....	678
not believing in any religion, shall be required to testify,.....	678
evidence of non-belief in the existence of God, may be received to affect credibility of,.....	678
not to be excluded, by reason of crime or interest in any proceeding civil or criminal,.....	678
conviction of any crime may be given in evidence to affect credibility of,.....	678
parties may be, in certain cases.....	678, 678
exception in relation to witnesses to wills,.....	678
wife may be, in actions against husband growing out of certain matters relating to her,.....	674
when and how may be summoned and compelled to give their deposition when living in this state,.....	674, 675
when living out of, by being within this state,.....	675
when their deposition is required to be used in other states and countries,.....	676

**WITNESSES—continued.**

how summoned before coroner's inquest,.....	849
fees of attendance in such cases,.....	849
may be examined separately,.....	849
testimony of, to be reduced to writing, and signed,.....	849
may be required to recognize by coroner,.....	849
Fees of, for travel and attendance,.....	736
to certify amount thereof in writing,.....	736
in contested elections, before payment, committee to certify necessity of attendance,.....	737
in criminal trials, attending in two or more cases, fees to be apportioned,.....	668
when may be wholly disallowed,.....	738
certificates of, officer not to be interested in,....	738
penalty for making false, with intent to defraud,.....	738
to be prosecuted for, within two years,.....	738
In equity cases, to be examined as in suits at law,.....	673
testimony in certain cases before single judge, how reported to full court,.....	561

**IN CRIMINAL CASES.**

may be summoned by justices of the peace, on request of attorney-general or party accused, but need not attend in latter case unless fees are paid,.....	670
in examinations before magistrate in criminal cases,.....	832-835
for prosecution, to be examined by magistrate,.....	833
for the prisoner, by himself or counsel,.....	834
testimony to be reduced to writing and subscribed,.....	834
to be recognized, with or without surety,.....	834
married woman or minor may recognize,.....	834
refusing to recognize when ordered, may be committed,.....	834
when unable to procure surety, his deposition may be taken, with consent of defendant,.....	833, 834
when recognizance of, may be discharged,.....	834
proceedings when recognizance is forfeited, and action brought,.....	835
surrender of, by surety,.....	835, 836
summoned for state to attend without payment of fees,.....	839
if unable to defray expenses, court may order their fees to be paid,.....	839
and make other reasonable order,.....	839
court, at each term, may make general order for payment of,.....	839
must obey subpoena issued by prosecuting officer in criminal cases,.....	839
for persons indicted for capital crime, or for crime punishable with imprisonment in state prison for life, to be summoned at expense of state,.....	839
two required to same overt act in treason,.....	791
after issue of fact joined, defendant may have commission for witnesses out of state,.....	840
prosecuting officer may join therein, and name witnesses on part of commonwealth,.....	840
further provisions in such cases,.....	840
may be detained in jails,.....	857
except in cases under laws of congress respecting fugitives from service, &c.,.....	857
in police courts, need not attend from day to day when cases are adjourned to a future day, but may recognize to attend at the time of adjournment,.....	671

# INDEX.

## WOOD.

cord, exposed for sale, dimensions of,.....	278
penalty for selling without being measured,.....	278
brought by water, how to be measured,.....	278
cities and towns may make regulations for measure- ment, sale, &c., of,.....	278
measurers of, to be chosen at annual town meeting, or appointed by selectmen,.....	161
to be sworn,.....	161
to measure wood, and deliver ticket certifying quan- tity, &c.,.....	278
fees of, and by whom to be paid,.....	278
carters of, &c., from wharves to have ticket from owner or seller, certifying quantity, &c.,.....	279
penalty on, for not having or showing ticket, &c.,.....	279
not to apply when owner, &c., transports from wharf to his own house, &c.,.....	279

## WOODLAND.

burning of coal pits and brushwood on certain, how punished,.....	807
--	-----

## WORKHOUSE.

persons convicted a second time of drunkenness may be committed to,.....	820
duty of keepers of, as to rogues committed,.....	820
(See <i>Almshouses</i> .)	

## WORSHIP, (see *Public Worship*),.....14, 84, 819

## WRECKS AND SHIPWRECKED GOODS.

commissioners of, to be appointed by governor, to be sworn and give bonds,.....	427
bond to be given to judge of probate, and remedy thereon as on administration bonds,.....	427
Commissioners of, to take charge of, and se- cure wrecked goods, if of one hun- dred dollars' value, and not in owner's custody,.....	428
power of, to employ assistants, and suppress dis- orders,.....	428
penalty on person disobeying lawful order of,.....	428
duty of, as to taking inventories, and deliv- ering copies thereof to parties inter- ested,.....	428
compensation of, how determined, in case of dis- pute,.....	428
to publish particulars of shipwreck, and of goods found,.....	428
penalty on, for not so publishing,.....	429
may sell by auction, within thirty days, property sufficient to pay duties there- on,.....	429
when may sell perishable goods, after adver- tising,.....	429
if no owner, &c., establishes his claim within a year, commissioners to account, &c., to state treasurer,.....	429
treasurer to make compensation to commissioners for services and expenses,.....	429
how such compensation to be adjusted, in case of dis- agreement,.....	429
treasurer to commence suit for neglect to account, &c., within sixty days after expiration of a year,.....	429
owner not liable to pay any person except a commis- sioner, unless for services rendered before a commissioner arrives,.....	428
commissioner to decide on compensation for services thus rendered,.....	428
such decision final, if sum demanded does not exceed fifty dollars,.....	428

## WRECKS AND SHIPWRECK

<i>finished.</i>	
when appeal is taken, superior the question summar- ary process,.....	
penalty for intermeddling with after a commissioner i	

## WRITS.

issuing from clerk's office, how and bear test,.....	
how issued, signed, filled out, an supreme and superior	
may run into any county,.....	
not to be abated for circumstan- of form,.....	
of right, formed on, and some actions abolished, rights,.....	
original, how framed in different when goods are attached on, sep- served,.....	
in actions against corporations liable to arrest, writs attachment may be con- in actions against executors and of,.....	
forms of, in civil actions, to be used, but may be altered necessary,.....	
changes in forms of, to be subje- and said court may not thereto,.....	
when defendant's name is not against him by a ficti-	
to be returnable at next term af- of service,.....	
of error, certiorari, mandamus, prohibition, to be court,.....	
and processes of supreme court adjourned term,.....	
and processes of supreme court by full court, how su- able,.....	
form of, when not prescribed, courts,.....	
not to be made or filled up sheriffs, coroners, or penalty,.....	
From police courts, how to and signed,.....	
From justices of the peace, forms prescribed, or such, may be framed how may issue, run, and be to be signed by justice, and like other writs,.....	
may be returnable at dwell- to be returnable before forenoon nor after five noon,.....	
in action on probate bonds, how to be indorsed before entry, w out of the state,.....	
liabilities of indorsers,.....	
after entry, indorser may be re- changed,.....	
(See <i>Indorse</i> )	

## SERVICE OF

from supreme and superior c fourteen days before	
---	--

**WRITS—continued.**

from police courts and justices of the peace, seven days,.....	622
against counties, towns, cities, parishes, religious societies, school districts, and proprietors of common lands, to be served thirty days,.....	622
separate summons on, to be served by delivering, or leaving original,.....	623
may be served after an attachment, and certifi- cate thereof indorsed on writ,.....	623
original writs, without attachment, to be served by copy,.....	623
summons, if not served personally on defendant, may be left at his last and usual place of abode, and if he has none, with his ten- ant, agent, or attorney,.....	623
to be left with co-defendant, if he has no such agent, tenant, or attorney; and is not per- sonally served with process,.....	623

**WRITS—continued.**

in real actions, if defendant is out of state, sum- mons to be left with occupant of premises in addition,.....	623
additional notice to be given, when defendant is out of state,.....	623
in actions against counties, cities, towns, parishes, school districts, and proprietors of com- mon and undivided lands, or general fields, or wharves lying in common, sum- mons, how served,.....	623
to be served by arrest or attachment, according to directions of plaintiff,.....	623
arrest on, how made, and proceedings thereon, .....	623-641

**WRITTEN.**

and "in writing," words, how construed,.....	52
--	----

**WRITTEN CONTRACT.**

specific performance of, how enforced,.....	556, 557
---	----------

**Y.****YARMOUTH.**

land in, for lighthouse, ceded to United States,.....	44
---	----

**YEAR.**

word means calendar year, unless otherwise ex- pressed,.....	51
alone, is equivalent to year of our Lord,.....	51
Political, commencement and termination of,.....	38

**YOUTH. (See Schools)**

provisions for the instruction of,.....	215, 216
best endeavors to be used, that they shall regularly attend schools,.....	217
all instructors of, to impress on their minds the prin- ciples of piety and justice, and a sacred regard to truth, &c.,.....	216











D LAW LIBRARY

